No. 10493

United States
Circuit Court of Appeals
For the Ninth Circuit

STATE OF WASHINGTON and EQUITABLE LIFE INSURANCE COMPANY OF IOWA,
Appellants,

vs.

MARICOPA COUNTY; JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County, Arizona; SIDNEY P. OSBORN, Governor, ANA FROHMILLER, State Auditor, and JIM BRUSH, State Treasurer, constituting the Loan Commissioners of the State of Arizona; JIM BRUSH, State Treasurer, and ANA FROHMILLER, State Auditor of the State of Arizona,
Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

BRIEF OF APPELLANTS

SMITH TROY, Attorney General, State of Washington; JOHN SPILLER, Assistant Attorney General, Olympia, Washington,
Attorneys for Appellant STATE OF WASHINGTON.

WOOD, HOFFMAN, KING and DAWSON; DAVID M. WOOD, 48 Wall Street, New York, New York,

GUST, ROSENFELD, DIVELBESS, ROBINETTE & COOLIDGE; J. L. GUST, 201 Professional Building, Phoenix, Arizona,
Attorneys for Appellant EQUITABLE LIFE INSURANCE COMPANY OF IOWA.

THE ARIZONA PRINTERS, INC.

SUBJECT INDEX

SUBJECT INDEX—(Continued)

SUBJECT INDEX—(Continued)

APPENDIX
EXHIBITS

TABLE OF CASES

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

Page

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

TABLE OF CASES—(Continued)

FEDERAL STATUTES CITED

STATE STATUTES CITED

STATE STATUTES CITED—(Continued)

CONSTITUTIONS CITED

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BRIEF OF APPELLANTS

Note: The parties will be referred to by their designations in the District Court, viz, appellants as plaintiffs and appellees as defendants. References to the transcript of record will be indicated by the letter T. followed by page number.

PRELIMINARY STATEMENT

Plaintiffs brought this suit in the United States District Court for the District of Arizona at Phoenix, seeking a declaratory judgment against the defendants to the effect that certain highway improvement bonds issued by defendant, Maricopa County, in the years 1919 and 1921, and not yet due according to their terms, were non-callable and that said defendant was legally obligated to continue to pay the interest thereon until their respective due dates. The defendants have taken steps to refund these bonds under existing statutes of the State of Arizona enacted after the issuance of the bonds. These refunding proceedings have been sustained by the Supreme Court of Arizona in mandamus suits to which neither plaintiffs nor any other bondholders were parties. The plaintiffs invoke the jurisdiction of the Federal Courts principally upon the ground that the statute and the resolutions of the defendants under which the refunding is proposed as construed by the Supreme Court of Arizona impair the obligations of the contract created by the issuance of the bonds. The principal issue is the construction of the bond contract, the Supreme Court of Arizona holding that notwithstanding the definite due dates authorized by Chapter 2, Title 52, Arizona Revised Statutes of 1913, the bonds were subject to refunding under the provisions of Chapter 1, Title 52, of said Revised Statutes and the plaintiffs contesting this. The defendants filed a motion for summary judgment which was granted by the court without making findings of fact or conclusions of law and without opinion.

STATEMENT OF JURISDICTION

1. *Jurisdiction of District Court*

(a) *Jurisdiction as to both plaintiffs.*

The complaint alleges that jurisdiction of the District Court is invoked upon the ground that this is a case arising under the Constitution and Laws of the United States (T. 4). The complaint shows that the bonds upon which the action is based were issued in 1919 and 1921 to run for a term of years (T. 11, 21); that those bonds which have become due have been paid and those which are not yet due are proposed to be refunded and redeemed under Article 4, Chapter 10, Arizona Code Annotated 1939 (T. 30, 31); that said Article 4, Chapter 10, first became a law of the State of Arizona as a new enactment and not as a re-enactment or revision of an existing statute, as Article 4, Chapter 60, Arizona Revised Code of 1928, on the first day of July, 1929, some seven or eight years after the issuance of plaintiffs' bonds (T. 36, 37); that Chapter 2, Ttitle 52, Arizona Revised Statutes 1913, under which plaintiffs' bonds were issued provided for bonds with definite maturity dates (T. 7-10); that Chapter 1, Title 52, of said Revised Statutes was not susceptible of a construction authorizing the refunding of bonds issued under said Chapter 2 (T. 39-40); and that if there existed any right to refund such bonds under the laws of Arizona, it was excluded by acts of the legislature of the state validating the particular issues after the

form of bond was adopted and placed of record (T. 39); that the decisions of the Supreme Court of Arizona in the mandamus suits are not binding upon the plaintiffs because no bondholders were parties thereto and that many questions presented in this suit were not considered by the Supreme Court of Arizona (T. 57); that the plaintiffs paid large premiums on their bonds for the right to collect the rate of interest therein specified until their due dates (T. 20-21, 29-30); and that to deprive the plaintiffs of this right by calling the bonds will impair the obligation of the plaintiffs' contract and deprive them of their property without due process of law (T. 56). It is plain that the facts alleged present federal questions under Title 28, Section 41, United States Code Annotated, said federal questions arising out of Section 10, Article 1, United States Constitution (impairing obligation of contracts) and Section 1 of the Fourteenth Amendment to the United States Constitution (due process of law). The complaint alleges that the loss each plaintiff will sustain if the bonds are presently called for redemption as proposed by defendants, will exceed the jurisdictional amount of $3000.00 (T. 6, 7).

(b) *Jurisdiction as to State of Washington*

One of the plaintiffs is a sovereign state. While this plaintiff might have resorted to the original jurisdiction of the United States Supreme Court (Sec. 2, Article 3, United States Constitution), under the federal statutes it has the same right as an individual to bring an ac-

tion in the District Court, under Title 28, United States Code Annotated, Section 41. This right is recognized by Title 28, United States Code Annotated, Section 341, which so far as applicable reads as follows:

"The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a state is a party except between a state and its citizens or between a state and citizens of other states or aliens, in which latter cases it shall have original but not exclusive jurisdiction."

The jurisdiction of the District Court to entertain actions to which a state is a party has often been sustained.

Ames v. Kansas, 111 U. S. 449, 463, 470, 28 L. ed. 482, 4 Sup. Ct. Rep. 437,

U. S. v. Louisiana, 123 U. S. 32, 36, 31 L. ed. 69, 8 Sup. Ct. Rep. 17,

U. S. v. California, 297 U. S. 175, 80 L. ed. 567, 574, 56 Sup. Ct. Rep. 421,

U. S. v. 40 Acres of Land, 24 Fed. Sup. 390,

U. S. v. 4450.72 Acres of Land, 27 Fed. Sup. 167, 176.

(c) *Jurisdiction Under Declaratory Judgment Act*

The relief sought is under the Declaratory Judgment Act. (T. 58) An actual controversy exists, for while there is yet no default in payment of interest on plaintiffs' bonds, proceedings

are pending under which it is declared payment of interest shall cease thirty days after the prescribed notice is given (T. 125). The jurisdiction of the federal courts to entertain a suit for declaratory judgment on this state of facts is established.

28 U. S. Code, Anno. 400,

Maryland Casualty Co. v. Pacific Coal and Oil Co., 312 U. S. 270, 85 L. ed. 826, 61 Sup. Ct. Rep. 510,

Aetna Life Insurance Co. v. Haworth, 300 U. S. 227, 81 L. ed. 617, 57 Sup. Ct. Rep. 461,

Stoner v. New York Life Ins. Co., 311 U. S. 464, 85 L. ed. 284, 286, 61 Sup. Ct. Rep. 336.

It will be noted that in the instant case federal questions are involved and that the plaintiffs were not parties to the actions in the state court so that no question of adjudication by the state court or of relinquishing jurisdiction to the state court can arise. The cases above cited under this heading show that the federal court does have jurisdiction and will entertain a declaratory judgment suit on facts such as we have in the instant case.

2. *Jurisdiction of Circuit Court of Appeals*

The judgment rendered in this case is a summary judgment rendered pursuant to Rule 56 of the Rules of Civil Procedure and is a final judgment (T. 221-223).

28 U. S. Code Anno. 400

Appeal therefrom lies under 28 U. S. Code Anno. Sec. 225, the general statute on appeal, and within the time limit allowed by 28 U. S. Code Anno. Sec. 230. Notice of apeal was seasonably given and appeal bond filed (T. 229-231).

STATEMENTS OF FACTS

1. *Statement of Proceedings in District Court*

This is an appeal from a summary judgment (T. 221-223) rendered by the United States District Court for the State of Arizona against the plaintiffs on defendants' motion on an amended complaint (T. 3) seeking a declaration that certain bonds issued by defendant, Maricopa County, in 1919 and 1921, are noncallable until the due dates of the bonds. The District Judge made no findings of fact nor conclusions of law. Presumably the judgment is based upon two decisions of the Arizona Supreme Court directing the defendants, State Loan Commissioners, to issue refunding bonds for the purpose of calling the two issues of bonds of which the bonds held by plaintiffs are a part.

See: Maricopa County v. Osborn, 125 P. (2d) 703, Maricopa County v. Osborn, 136 P. (2d) 270 (Adv.)

The District Court in making its decision on the motion for summary judgment had before it: Plaintiffs' amended complaint (T. 3-67), defendants' amended answer to amended complaint (T. 67-79), affidavits

of Leslie C. Hardy and Earl Anderson in support of motion for summary judgment (T. 85-133), affidavit in opposition to motion for summary judgment (T. 134-166) and plaintiffs' Exhibit One, being Petition for Writ of Mandamus in the second of the above mentioned mandamus cases (T. 167-218). There are no disputed questions of fact. The case depends wholly upon the scope and extent of the jurisdiction of the federal courts in cases of this kind and the meaning and effect of certain statutes of the State of Arizona, and the resolutions adopted by the defendants and the acts performed by them in pursuance of such statutes. The ultimate question to be answered by this court is, "are plaintiffs' rights under Section 10 of Article I. and the Fourteenth Amendment to the Federal Constitution being violated by the statutes of Arizona, the resolutions of the defendants and the steps taken and about to be taken by defendants by direction of the Supreme Court of Arizona in pursuance of such statutes and resolution?"

2. *Statement of Facts Constituting the Basis of Plaintiffs' Cause of Action*

The bonds involved in this suit are of two issues: (1) An issue of Maricopa County Highway Bonds authorized May 17, 1919, and issued in 1919 (T. 11-20), and (2) An issue of Maricopa County Highway Bonds authorized December 31, 1920, and issued in 1921 (T. 21-29). Plaintiff, State of Washington, owns $31,000 par value of the first issue and $205,000 par value of the second issue (T. 4-6). Plaintiff, Equitable Life Insurance Company, owns $91,000 par value of the first issue (T. 6-7). The bonds of each

issue were expressly made payable on certain specific due dates (T. 59, 63) extending over a period of years. The resolutions calling the election for the bonds published as a notice of election (T. 13, 23) expressly stated the number of years each bond was to run (T. 12, 21) and the electors of the county, by their vote, approved bonds running for such terms (T. 13, 23) and maturing at the end thereof. The resolution canvassing the returns of the election and authorizing the issuance of the bonds, which was recorded (T. 13-23) as required by statute, contained the same statement (T. 14-23). That the bonds were issued and the proceedings for the issuance thereof were in exact compliance with the then existing statutes of Arizona will be hereafter pointed out more in detail in our argument.

All of the bonds that have become due have been paid by the county (T. 30) and the interest coupons that have matured have been paid (T. 30). The County of Maricopa is not embarrassed by lack of funds. There yet remain outstanding $1,700,000 bonds (T. 173) of the first issue which become due serially ending with the year 1949 (T. 173) and $2,400,000 bonds (T. 173) of the second issue which become due serially ending with the year 1951 (T. 174). Plaintiffs' bonds are a part of those outstanding and not yet due (T. 5, 6). The interest rate on the first issue is 5½ per cent per annum, and on the second issue 6 per cent per annum (T. 5). Each of the plaintiffs purchased its bonds in the open market and paid a large premium thereon in reliance upon the agreement of the County to pay interest on the several bonds until their due dates (T. 20, 30) which agreement was expressed in the bonds (T. 59, 63) and coupons (T.

16, 26) and authorized by the resolutions of the Board of Supervisors and the statutes of the state, and by the electors of the county at the election authorizing the issuance of the bonds (T. 13, 23).

Prior to the year 1942, no contention was ever advanced that these bonds were callable prior to their due dates (T. 17, 27). Subsequent to the issuance of these bonds, the legislature of the state passed several refunding acts limiting the refunding of State, County, Municipal and School District bonds to bonds which had become callable under provisions therein contained (T. 34) and thereby recognized the fact that bonds such as those involved in this case which contain no provision for call are not refundable before they become due. In the year 1942 the board of supervisors of Maricopa County passed a resolution requesting the State Loan Commissioners of the State of Arizona to refund the outstanding remainder of these two issues of bonds (T. 30) at a lower rate of interest, under the provisions of Article 4, Chapter 10, Arizona Annotated Code of 1939. This article first became effective as a law of the State on July 1, 1929 (T. 36) as Article 4 of Chapter 60, Arizona Revised Code of 1928, respectively, ten and eight year after the bonds involved in this case were issued. The State Loan Commissioners declined to proceed whereupon Maricopa County brought an original mandamus proceeding in the State Supreme Court to compel the State Loan Commissioners to proceed with the refunding (T. 31). To this proceeding no bondholder was made a party (T. 31). Such original proceeding can be brought against state officers only, and it is doubtful if anybondholder could be made a party, or could intervene. Amici curiae briefs were filed, one of

which is attached to the affidavit of Leslie C. Hardy filed in support of defendants' motion for summary judgment. This brief shows it was filed purely as an amicus curiae brief (T. 96) and shows that the attorneys filing the brief represent only one bondholder (T. 112). This bondholder was not one of the plaintiffs in this case. Said brief fails to present many of the contentions urged by plaintiffs in this case (T. 96-113). The Supreme Court of Arizona rendered its opinion directing the writ to issue commanding the defendants, State Loan Commissioners, to proceed with the refuding (T. 31). No appeal or writ of certiorari to the Supreme Court of the United States was taken by the defendants, State Loan Commissioners. Amici curiae under the practice of the Supreme Court of Arizona have no control over the proceedings and are not allowed to participate in the argument before the court. Their recognition goes only to the extent of being permitted to file a brief to advise the court on the issues made by the parties. Most of the material issues of this case were not presented to the Supreme Court of Arizona in said mandamus suit, (Maricopa County vs. Osborn, 125 P. (2nd) 703). After said decision of the Supreme Court of Arizona, the Board of Supervisors of Maricopa County again demanded that the State Loan Commissioners proceed with the refunding of said bonds (T. 31). Said Loan Commissioners thereupon adopted a resolution calling for bids for such refunding (T. 31). One bid was received (T. 31). This was accepted by the State Loan Commissioners with the approval of Maricopa County (T. 31). The bidder requested a further proceeding in the State Supreme Court to establish the legal validity of the refunding bonds, and to de-

termine what notice must be given to call the outstanding bonds to stop payment of interest thereon (T. 31). Thereupon a further original mandamus suit was brought in the State Supreme Court in which Maricopa County was sole plaintiff, and the State Loan Commissioners were the only defendants (T. 32). Said suit was brought not to grant a hearing upon or consideration of the rights of the holders of the outstanding bonds, but to obtain a declaration from the Supreme Court of Arizona as to the validity of the proposed refunding bonds (T. 32). The questions submitted to the Supreme Court of Arizona in said suit were limited to the following: (1) No profit would result to the county from the issuance of the refunding bonds by reason of the fact that the outstanding bonds were not callable and payment of interest thereon would not cease until they became due according to their terms; (2) that there was no form or method of notice provided for calling the outstanding bonds; (3) that the maturities of the proposed refunding bonds were not in accordance with the statute; (4) that no authority existed in the statute for the levy of sufficient taxes to retire the proposed new bonds according to their terms; (5) that the refunding bonds would be subject to refunding the day after their issuance; and (6) that the law required the manual and personal signature of the Treasurer to all the coupons, and this was physically impossible (T. 32-33).

The Supreme Court determined the particular questions in favor of the county, and directed that the writ issue commanding that the State Loan Commissioners proceed with the refunding.

Maricopa County vs. Osborn, 136 Pac. (2nd) 270 (Adv.)

After the complaint in the last mandamus suit was filed, but before the decision therein was rendered, plaintiffs filed this suit in the United States District Court of Arizona. Before this case was argued in the United States District Court, the Supreme Court of Arizona rendered its judgment in the mandamus suit last above mentioned, and plaintiffs herein thereupon filed their amended complaint and defendants filed their amended answer to amended complaint (T. 67) in which they set up the decision of the Supreme Court of Arizona in the said two mandamus suits (T. 72-74).

STATUTES TO BE CONSTRUED

There are three Arizona statutes which are principally involved in the decision of this case. The effect of these statutes is alleged in the amended complaint. The following is a review thereof:

1. Chapter 2, Title 52, Arizona Revised Statutes of 1913, which is the act under which all the bonds involved in this case were issued. (T. 135-156.)

2. Chapter 1, Title 52, Arizona Revised Statutes 1913 which defendants claim authorized the refunding and calling of the bonds involved in this case at the time of their issuance, (Exhibit F this brief.)

3. Article 4, Chapter 10, Arizona Code Annotated 1939, originally enacted as Article 4, Chapter 60, Arizona Revised Code of 1928, under which defendants propose to issue the refunding bonds.

The first statute above mentioned, to-wit, Chapter 2, Title 52, Arizona Revised Statutes of 1913, is the statute under which plaintiffs claims a contract was created obligating Maricopa County to pay interest on plaintiffs' bonds until their due dates.

The second of the above statutes, Chapter 1, Title 52, Arizona Revised Statutes of 1913, is the statute which defendants claim modified the provisions of said Chapter 2, Title 52, so as to permit the refunding and calling of bonds issued thereunder by the state loan commissioners whenever such refunding and calling would effect a saving to the county.

The third of the above statutes, Article 4, Chapter 10, Arizona Annotated Code 1939, formerly Article 4, Chapter 60, Arizona Revised Code 1928, together with certain resolutions adopted by defendants, is the statute which plaintiffs contend is the law impairing the obligation of the contract created by the issuance of their bonds.

Chapter 2, *Title* 52, *Arizona Revised Statutes of* 1913

This statute was first enacted as Chapter 29 of the Acts of Regular Session of the First Legislature of the State of Arizona (Sessions Laws of 1912, Regular Session). Minor additions were made to two sections thereof which are not of significance in this case by Senate Bill 86 and Senate Bill 38 of the Third Session (2nd Special) of the First Legislature (T. 148, 154). With said two additions said act was reenacted verbatim except that the word "title" was substituted for the word "act" by Chapter 20 of the

Third Special Session of the First Legislature (T. 135, 156). As so re-enacted said act became Chapter 2, Title 52, Arizona Revised Statutes of 1913 and was in full force and effect when plaintiffs' bonds were issued. The title to both the original act and the re-enactment thereof was as follows: "AN ACT—ENABLING COUNTIES, SCHOOL DISTRICTS, CITIES, TOWNS AND OTHER MUNICIPAL CORPORATIONS TO BECOME INDEBTED IN AN AMOUNT EXCEEDING FOUR PER CENT OF THE TAXABLE PROPERTY THEREIN; TO PROVIDE FOR ELECTIONS THEREFOR; TO PERMIT COUNTIES, SCHOOL DISTRICTS, CITIES, TOWNS AND OTHER MUNICIPAL CORPORATIONS TO ISSUE BONDS FOR SUCH INDEBTEDNESS AND TO PROVIDE FOR THE MANNER OF THE EXPENDITURE OF THE PROCEEDS OF SUCH BONDS, THE PAYMENT OF INTEREST THEREON, *AND THE REDEMPTION THEREOF;* TO PROVIDE FOR THE CREATION OF INDEBTEDNESS BY INCORPORATED CITIES OR TOWNS FOR SUPPLYING WATER, ARTIFICIAL LIGHT AND SEWERS WHEN THE WORKS FOR SUCH WATER, ARTIFICIAL LIGHT AND SEWERS ARE OR SHALL BE OWNED OR CONTROLLED BY THE MUNICIPALITY, AND FOR THE REPEAL OF ALL ACTS OR PARTS OF ACTS IN CONFLICT HEREWITH." (Italics ours) (See: Chapter 29, p. 61 Arizona Session Laws of 1912, Regular Session. See also: T. 135, 136).

A certified copy of this act was put in the record by affidavit for the reason that the act is not fully set forth in the Arizona revised statutes of 1913, in

that the title and repealing clause are omitted in said revised statutes.

Section 8 of this act provided that there should be set forth in the order for election, "the aggregate amount of said bonds, *the term thereof*, the rate of interest to be paid thereon, when such interest shall be paid, *the date of maturity* of said bonds or other evidences of indebtedness, and the purpose for which the money derived from the sale of such bonds or other evidences of indebtedness shall be expended" (Italics ours) (T. 143-144).

Section 9 of said act provided that "said bonds shall be payable at a date not to exceed forty years from the date of their issuance." (T. 145) .

Section 10 of said act provided for coupons for the interest to be attached to said bonds (T. 145).

Section 11 of said act provided that said bonds shall not be sold for a less amount than par with accrued interest, such sale to be made after four weeks' publication to the best bidder (T. 145-146).

Section 14 of said act provided for the levy of a tax to pay the principal on said bonds and further provided "The tax in this section provided to be levied shall be levied annually so as to provide a fund for the *redemption of such bonds or other evidences of indebtedness when the same shall mature.*" (Italics ours) (T. 148).

Section 15 of said act provided that "when any bonds or other evidences of indebtedness created un-

der the provisions of this act *shall mature* it shall be the duty of the county treasurer * * * * to give notice for four weeks in some newspaper published in the county * * * * of the intention of said county * * * * to redeem such bonds." (Italics ours) (T. 150).

Plaintiffs' bonds were issued in compliance with the above provisions. Said bonds purport to be issued under said Chapter 2, Title 52, Revised Statutes of Arizona, of 1913 (T. 60, 64). They refer also to Chapter 31 of the Session Laws of Arizona, Regular Session 1917, which was an act creating county highway commissions and providing for the issuance of bonds under the existing statutes of the state for the construction of highways. Further authority for the 1919 issue of bonds involved in this case is found in Chapter 54, of the Session Laws of 1921, ratifying said bonds after the form thereof was determined and a contract for the sale thereof entered into (T. 19-20) and further authority for the 1921 issue of plaintiffs' bonds is found in Chapter 86 of the Arizona Session Laws of 1921, ratifying said bonds after the form thereof had been adopted and placed on record. (T. 28-29).

Chapter 1, *Title* 52, *Arizona Revised Statutes* 1913
(See Exhibit F this brief)

This is the statute which the defendants claim modified the provisions of Chapter 2, Title 52, so as to permit the refunding and calling of bonds issued under Chapter 2 by the state loan commissioners whenever such refunding and calling would effect a saving to the county. Plaintiffs' bonds do not mention this statute but purport to be issued under Chapter 2, of

the said Title 52, and Chapter 31 of the Session Laws of 1917 (T. 60, 64). There is, however, in said bonds a general statement that they are issued "pursuant to and in strict compliance with the Constitution of the State of Arizona and the statutes thereof," (T. 60, 64) and the Supreme Court of Arizona reached the conclusion that the provision in Section 5252 of said Chapter 1 to the effect that,

> "Said commissioners shall from time to time issue negotiable coupon bonds of this state when the same can be issued at a lower rate of interest than previously paid on state indebtedness and to the profit and benefit of the state,"

was made applicable to county, municipal and school district bonds by the provision in Section 5260 of said chapter to the effect that,

> "* * * and said loan commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness upon the official demand of said authorities in the same manner as other state indebtedness now allowed or that may be hereafter allowed by law to said county, municipality or school district upon official demand by said authorities,"

and that the combined effect of the two provisions was to give the county board of supervisors the right to require the state loan commissioners to issue refunding bonds for any outstanding county, municipal and school district bonds whether due or not due, including the right to call said bonds at any time when in the opinion of the Board of Supervisors the calling

in of the outstanding bonds and issuance therefor of bonds by the state loan commissioners would effect a saving and benefit to the county.

> Maricopa County vs. Osborn, 125 Pac. (2nd) 703.

The greater portion of said Chapter 1, Title 52, had its origin in Chapter 1, Title 31, of Arizona Revised Statutes of 1887, Sections 2039-2052. The particular words in Section 5252 of said Chapter 1, Title 52, which it is claimed authorize the calling of the outstanding bonds first made their appearance in Section 2040 of Chapter 1, Title 31, Revised Statutes of 1887, said words in the 1887 statute being as follows,

> "The said commissioners shall from time to time issue negotiable coupon bonds of this Territory when the same can be done at a lower rate of interest and to the profit and benefit of the Territory."

Said Section 2040, however, authorized redeeming and refunding only of "existing and subsisting Territorial legal indebtedness and also that which may at any time become due." *It did not authorize redeeming or refunding of any indebtedness before it was due.* Neither did said act of 1887 give the loan commissioners any jurisdiction whatsoever over state, county or municipal indebtedness. Their authority under that act was limited strictly to "territorial indebtedness." On June 25, 1890, the Congress of the United States which exercised revisory control over the legislation of the territory re-enacted the above mentioned act

of 1887 with certain additions thereto. Chapter 614, 51st Congress, First Session, set forth on pages 103-109 Revised Statutes of Arizona for 1901. (See Exhibit G this brief). One of the additions made by this act of Congress was to extend the power of the loan commissioners to territorial indebtedness that, "may be hereafter authorized by law." Paragraph 2040, page 104, Arizona Revised Statutes 1901. Another addition was by adding a rider to Paragraph 2048 of the Territorial Act of 1887, reading as follows:

> "The boards of supervisors of the counties, the municipal and school authorities, are hereby authorized and directed to report to the loan commissioners of the territory their bonded and outstanding indebtedness, and said loan commissioners may, on written demand, require an official report from the board of supervisors of counties, the municipal or school authorities, of their bonded and outstanding indebtedness, and said loan commissioners shall provide for the redeeming or refunding of the county, municipal, and school district indebtedness, upon the official demand of said authorities in the same manner as other territorial indebtedness, and they shall issue bonds for any indebtedness now allowed or that may be hereafter allowed by law to said county, municipality, or school district, upon official demand by said authorities; the county, municipality, or school district to pay into the territorial treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the territorial board of equalization,

> or on their failure by the territorial auditor to be levied for the payment of the principal of the bonds issued in redemption, refunding, or other bonds issued to such county, municipality or school district when the same shall become due, and, in addition, a rate of interest paid by the territory on such bonds."
>
> Paragraph 2048, page 108, Arizona Revised Statutes, 1901.

A further addition to said Territorial Act of 1887, was Section 15 of the Act of Congress, which contained a proviso,

> "That the present existing and outstanding indebtedness, together with such warrants as may be issued for the necessary and current expenses of carrying on territorial, county, municipal and school government for the year ending December 31, 1890, may also be funded and bonds issued for the redemption thereof."
>
> Section 15, page 109, Arizona Revised Statutes, 1901. (See Exhibit G this brief).

It will be noted that the rider added to Section 2048 of the Territorial Act of 1887 by Congress did not empower the loan commissioners to refund county, municipal and school district indebtedness thereafter authorized by law, as it did territorial indebtedness in Section 2040 but with respect to the county, municipal and school district indebtedness it provided the following: (a) The board of supervisors, municipal and school authorities should report their bonded

and outstanding indebtedness, (b) that the commissioners should provide for the redeeming or refunding of the county, municipal and school district indebtedness upon the official demand of said authorities in the same manner as other territorial indebtedness, and (c) that they should issue "bonds for any indebtedness now allowed or that may be hereafter allowed by law to said county, municipality or school district upon official demand by said authorities." The significance of the use of the term, "now allowed," or "that may be hereafter allowed by law," instead of the term, "may be hereafter authorized by law," as was used with reference to territorial indebtedness is made clear by reference to the report of the Congressional Committee upon consideration of the act which is attached to this brief as Exhibit "A". It clearly appears from references to said committee report and to contemporary territorial legislation that the term "allowed by law" had no reference to bonded indebtedness but to the unfunded indebtedness existing and to be incurred before December 31, 1890, the time limit fixed by Section 15 of the act.

On August 3, 1894, Congress passed an act amending Section 15 of the above mentioned Act of June 25, 1890, by providing that outstanding warrants, certificates and other evidences of territorial indebtedness only, issued subsequent to December 31, 1890, up to December 31, 1895, mught be included in said refunding bonds. Paragraph 105, page 109, Arizona Revised Statutes of 1901. (See Exhibit H this brief).

On June 6, 1896, Congress passed a further act entitled, "An Act Amending and Extending the Provisions of the Act of Congress Entitled, 'An Act Ap-

proving With Amendments the Funding Act of Arizona, approved June 25, 1890, and the Act Amendatory Thereof and Supplemental Thereto, Approved August 3, 1894,'" (29 Stat. 262). This act is set forth in full in

Gage v. McCord, 5 Ariz. 227, 51 Pac. 977

(See Exhibit "I" this brief). This last act of Congress extended the indebtedness to be refunded under the acts so amended to January 1, 1897.

The foregoing Congressional acts definitely show: (1) that the Act of June 25, 1890, which later became Chapter 1, Title 52, Arizona Revised Statutes of 1913, was limited to the refunding of indebtedness existing when the act was passed except that warrants issued for necessary and current expenses for the year ending December 31, 1890, were authorized to be funded and bonds issued for the redemption thereof, and (2) that said Act of June 25, 1890, limited the refunding to bonds that were due or were surrendered by the holders thereof. The first proposition appears from Section 15 of the Act of June 25, 1890, and the amendment thereof by the Act of August 3, 1894, and the amendment thereof by the Act of June 6, 1896, and also from the report of the committee of the House of Representatives on the Act of June 25, 1890, which is attached to this brief as Exhibit "A". This report contains the following statement:

> "The time within which indebtedness may be funded is placed at December 31, 1890, when the taxes are due and payable. From and after that date there will be cash on hand with which to meet the current expenses of the Territory."

and from the proceedings of the House of Representatives on the amending act of August 3, 1894, which are set forth in Exhibit "B" attached to this brief. In these proceedings delegate Smith of Arizona, in discussing said act which provides for an extension of the refunding of territorial warrants only, says:

> "It is desired to fund them under the Funding Act until the collection of the taxes so as to be able to start on a cash basis. This is purely a local matter extending our Funding Act and the bill is unanimously reported from the Committee on the Judiciary."
>
> Mr. Hunter: "I see that it provides for extending the time up to 1895."
>
> Mr. Smith from Arizona: "Yes. That is until the collection of taxes."

and also from the report of the Committee of the House of Representatives on the Act of June 6, 1896, set forth in Exhibit "C" attached to this brief, in which the Committee says:

> "A supplemental Act of Congress was passed and approved August 3, 1894, extending the time for funding outstanding warrants for territorial expenses only until December 31, 1895. The object of the present bill is to further extend the provisions of the Funding Act approved June 25, 1890, until January 1, 1897, so as to permit and authorize the funding of such outstanding indebtedness as might have been funded under the original act had the same been surrendered be-

fore the act had lapsed. It is not proposed to fund any indebtedness which could not have been funded under the original act had said indebtedness been presented in time."

The above statement is repeated in the Report of the Senate Committee on the bill set forth in Exhibit "D" attached to this brief.

It is clear beyond all question that the Act of Congress of June 25, 1890, which later became Chapter 1, Title 52, Arizona Revised Statutes, 1913, as originally adopted, limited the refunding to indebtedness existing when the act was passed with the addition of floating indebtedness incurred before December 31, 1890, the end of the year in which the act was passed, and that by Act of August 3, 1894, there were added to the indebtedness that could be refunded under the act territorial warrants (only) issued up to December 31, 1895, and that by the Act of June 6. 1896, the refunding of all indebtedness authorized by the Act of June 25, 1890, territorial, county, municipal and school district, was extended to January 1, 1897, and this was the last extension.

The second proposition above stated that said Act of June 25, 1890, authorized only the refunding of indebtedness which was due or surrendered by the holder thereof appears conclusively from the proceedings of the House of Representatives on the Act of June 6, 1896, set forth in Exhibit "D" attached to this brief. The report of the Committee on Territories states:

"Only such bonded indebtedness could be funded

as had matured or was voluntarily surrendered by the holders thereof."

Mr. Murphy then the Congressional delegate from Arizona and a former governor of Arizona, stated the following:

"A commission was organized under the act consisting of the governor, the secretary and the territorial auditor, for the purpose of executing the law but, *of course, the outstanding indebtedness bearing a higher rate of interest could not be compelled to be surrendered or funded unless it had matured* and therefore, there still remained a considerable portion which could not be funded. Many obligations were about to mature and they were funded. A portion of the 8% indebtedness was funded but some of the higher interest bearing bonds of counties and municipalities were refused to be surrendered for funding. The expectation was to put the territory upon a cash basis but that expectation was disappointed and the members of the territorial government came here and asked the last Congress to extend the Funding Act for a year longer covering the floating indebtedness and the territorial expense only, but not including the outstanding indebtedness of municipalities bearing a higher rate of interest. That act was passed August 3, 1894." (Italics ours).

The report of the Senate Committee on the same act, Exhibit "C" attached to this brief, also states:

"Only such bonded indebtedness could be funded

as had matured or was voluntarily surrendered by the holders thereof."

Thus it clearly appears that the Act of June 25, 1890, was construed upon its original enactment as not authorizing the very thing which the defendants and the Supreme Court of Arizona now say it did authorize. Needless to say, the defendants did not call to the attention of the Supreme Court of Arizona the above mentioned early construction of said act.

The Act of Congress of June 25, 1890, above mentioned, provided that said act was passed subject to future territorial legislation and the territorial legislature passed an act, approved March 19, 1891, providing for funding territorial, county and other indebtedness, being supplemental to the Act of Congress approved June 25, 1890.

Act 79, page 97, Arizona Session Laws, 1891 Section 1 of said act provided that,

"To carry out the purpose and intention of said act of Congress the loan commissioners of the Territory of Arizona shall provide for the liquidation, funding and payment of the indebtedness existing and outstanding on the 31st day of December 1890 of the Territory, the counties, municipalities and school districts within said Territory by the issuance of bonds of said Territory as authorized by said act."

There is nothing whatever in said act of the territorial legislature providing for the funding and payment of indebtedness thereafter to be incurred.

Thereafter, the territorial legislature passed an act approved March 19, 1895, entitled, "An Act to Provide For Funding Territorial Indebtedness Only Incurred Since December 31, 1890, in Accordance With an Act of Congress Entitled, 'An Act Approving With Amendments the Funding Act of Arizona, Approved June 25, 1890,' and approved August 3, 1894."

Act 33, page 42, Arizona Session Laws of 1895.

In this act of the territory, the funding of indebtedness created up to December 31, 1895, was provided for as authorized by the Act of Congress approved August 3, 1894.

It is thus clear that both Congress and the territorial legislature, by subsequent legislation interpreted the provision in the Act of June 25, 1890, as authorizing only the refunding of indebtedness existing when the act was passed.

While no statute was passed thereafter giving the same interpretation, the territorial legislature up until the year 1909 frequently passed acts providing for optional bonds. Inasmuch as such optional bonds would be in direct conflict with the interpretation which the defendants now place on the language used in the Act of Congress of June 25, 1890, these territorial acts clearly show that the legislature of the territory did not interpret said act as it is now interpreted by the defendants. A summary of said territorial acts is attached to this brief as Exhibit "E".

The 1909 legislature was the last territorial legislature. After statehood special acts for the issuance of bonds were prohibited by the state constitution.

The Act of Congress of June 25, 1890, with the amendments that had been made thereto became a law of the state of Arizona insofar as it was not inconsistent with the state constitution by virtue of Section 2 of Article 22 of said constitution, which reads as follows:

> "All laws of the Territory of Arizona now in force not repugnant to this constitution shall remain in force as laws of the State of Arizona until they expire by their own limitations or are altered or repealed by law; provided that wherever the word territory meaning the Territory of Arizona appears in said laws the word state shall be substituted."

Under this provision it is held by the Supreme Court of Arizona that laws of the territory insofar as not inconsistent with the state constitution became laws of the state upon the adoption of the state constitution.

> McCarthy vs. City of Tucson, 26 Ariz. 311, 225 Pac. 329.

The first legislature of the state of Arizona at its regular session in 1912 made no changes in said act of congress of June 25, 1890, and at said session enacted no legislation providing for funding or refunding. It did, however, in said regular session in 1912 adopt an act authorizing the issuance of state, county and municipal bonds with the approval of the property taxpayers in excess of 4% of the assessed valuation (Chapter 29, p. 61, Session Laws of 1912, Regular Session. which afterward became Chapter 2, Title

52, Revised Statutes of 1913, under which plaintiffs' bonds were issued). Said legislature at its 1912 regular session also adopted an act providing for the issuance of bonds by school districts when they did not exceed 4% of the assessed valuation of the district (Sections 45 to54, Chapter 77, p. 364, 368, Session Laws 1912, Reg. Session) which last mentioned act provided that the school trustees should prescribe the form of bonds and must fix the time when the whole or any part of said bonds shall be payable, which should not be more than twenty years from the date thereof and made provision for levying a tax to provide a sinking fund for said bonds and provided that,

> "Such tax must not be less than sufficient to pay the interest of said bonds for that year and such portion of the principal as is to become due during such year and in any event must be high enough to raise annually for the first half of the term said bonds have to run a sum sufficient to pay the interest thereon and during the balance of the term high enough to pay such annual interest and pay annually a portion of the principal of said bonds equal to the sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds then have to run."

The provisions of this act have remained practically unchanged to the present time.

At its first special session which was held in 1912, the legislature provided for funding and refunding by re-enacting with some minor changes therein not material to this case, the Act of Congress of June 25,

1890, thus continuing the same in force as the law of the state, (Chapter 29, Sess. Laws 1912, 1st Spec. Sess.).

The fact that in this enactment the legislature copied verbiage plainly obsolete under the new constitution shows that its purpose was primarily to continue the legislative machinery for collecting and disbursing the interest and principal on the bonds already issued rather than to provide for the funding or refunding of existing indebtedness. The fact that no effort was ever made to fund or refund any indebtedness under this statute but when the need for refunding arose in 1927 and 1935 further legislation was passed to provide therefor, substantiates this view.

Amendments were made to two sections of said Chapter 29, Session Laws of 1912, First Special Session, at the second special session of said first legislature (See marginal notations to Chapter 1, Title 52, Revised Statutes 1913) but no action whatever was taken with reference to said act by the third special session of the state legislature (T. 134). Said legislature at its third special session, however, re-enacted in its entirety, with certain amendments, Chapter 29 of the Regular Session of the First Legislature, being an act providing for the issuance of state, county and municipal bonds. This act was Chapter 20, Session Laws of 1913, Third Special Session, and became Chapter 2, Title 52, Revised Statutes of 1913, under which plaintiffs' bonds were issued. This act, including the title, is found on pages 135-156 of the transcript of record.

The transcript of record, pages 157-166, also contains Chapter 64 of the Third Special Session of the First Legislature of the State of Arizona which is not found in the 1913 Revised Statutes. This act directs the code commissioner to compile all laws of a permanent nature in force upon the adjounrment of the Third Special Session of the State Legislature or thereafter to take effect but expressly provides that the code commissioner shall have no power to change any law. Said Chapter 64 makes it plain that said Revised Statutes of 1913 are a compilation of existing statutes and not a revised code.

There was in force as a law of the State of Arizona when Chapter 2, Title 52, Revised Code of 1913 was passed, Chapter 19, Third Special Session of the First Legislature, which originally existed as Chapter 5, Title 60, of the Revised Statutes of 1887. It was dropped out of the 1901 Revised Statutes but was revived as Chapter 10, page 8, of the Session Laws of 1907 and became a law of the state upon statehood by virtue of Section 2, Article 22, of the Arizona Constitution. It was re-enacted by the First State Legislature as Chapter 19 of the Third Special Session just prior to the enactment of Chapter 20 of said Third Special Session, afterwards codified as Chapter 2, Title 52, Revised Code of 1913. Section 6 of said Chapter 19 reads as follows:

> "Sec. 6. When a statute has been enacted by the legislative power of the state and has become a law no other statute, law or rule is continued in force because it is consistent with provisions of such statute, passed subsequently thereto but

in all cases provided for by such subsequent statute, all statutes, laws and rules theretofore in force in this state, whether consistent or not with the provisions of such subsequent statutes unless expressly continued in force by it, shall be repealed and abrogated."

Section 5553, Revised Statutes of 1913.

This quoted statute is given its full effect by the decisions of the Supreme Court of Arizona.

Olson v. State, 36 Ariz 294, 301; 285 Pac. 282.

DECISIONS CONSTRUING CHAPTER 1, TITLE 52, REVISED STATUTES OF 1913

The Act of Congress of June 25, 1890, and the additional acts pertaining thereto were construed in several cases by the Supreme Court of the United States and the Supreme Court of the Territory of Arizona. Thus it was held that the railroad bonds which were declared void in Lewis v. Pima County, 155 U. S. 54, were ratified by the Act of Congress of June 6. 1896, and must be refunded by the loan commissioners.

Utter v. Franklin, 172 U. S. 416, 43 Law Ed. 498, 19 Sup. Ct., Rep. 183.

Murphy v. Utter, 186 U. S. 95, 46 Law Ed. 1070, 22 Sup. Ct., Rep. 776.

Coconino County v. Yavapai County. 5 Ariz. 385, 52 Pac. 1127.

and that the actual refunding operations might be

performed after January 1, 1897, but no indebtedness incurred after that date could be refunded.

> Gage v. McCord, 5 Ariz. 227, 51 Pac. 977, 978. Schuerman v. Territory, 7 Ariz. 62, 60 Pac. 895.

It was also held that the owners of said bonds were entitled to demand this refunding so a demand by the municipal authorities upon the loan commissioners was unnecessary.

> Bravin v. Mayor of Tombstone, 6 Ariz. 212, 56 Pac. 719.
>
> Yavapai County v. McCord, 6 Ariz. 423, 59 Pac. 99.

The Supreme Court of Arizona in the second mandamus case, Maricopa County v. Osborn, 136 Pac. (2nd) 270, held that Chapter 1, Title 52, Revised Statutes of 1913, was a re-adoption and a continuation in force of the powers, functions and duties of the loan commissioners as granted by the Congressional Act of June 25, 1890, so that Paragraph 2987, Revised Statutes 1887, which was in force when said Congressional act was passed and became a part of said act by reference remained a part of Chapter 1, Title 52, Revised Statutes of 1913, notwithstanding the fact that it had long since been repealed. The following language of the Supreme Court of Arizona shows its decision to the effect that the re-enactment of the old Congressional Act of 1890 by the First Legislature of the State of Arizona was continuation of that act as the law of the state without change in meaning, to-wit:

"This provision for the publication of notice of the redemption of warrants was in existence simultaneously with the existence of the Funding Act. U. S. Revised Statutes, Paragraph 2046 (see Revised Statutes of Arizona 1901, page 106), which provided also that upon receipt of the purchase price of the bonds issued by the loan commissioners the treasurer should give notice of his readiness to redeem the indebtedness as provided by law as in the case of the payment and redemption of territorial warrants, so when the Special Session of the First Legislature of the State of Arizona re-adopted and continued in force the powers, functions and duties of the loan commissioners as Chapter 29, it effectively continued in force for all purposes insofar as the rights, powers and functions of the loan commissioners are concerned, the provisions of Paragraph 158 of the Revised Statutes of Arizona 1901, fixing the time and method of publication of notice for the redemption of outstanding bonds to be paid from proceeds of the sale of refunding bonds issued by the loan commissioners."

Paragraph 158, Revised Statutes of Arizona 1901, was originally Paragraph 2987, Revised Statutes of 1887.

REFUNDING STATUTES OF ARIZONA LIMITED TO BONDS THAT ARE DUE OR OPTIONAL

The provisions for refunding county, municipal and school district indebtedness contained in Chapter 1, Title 52, Revised Statutes of 1913 were never attempted to be used. The legislature in 1927, adopted an

act for refunding county, municipal and school district bonds and in said act expressly limited the refunding to indebtedness "which has or may hereafter become payable at the option of such county, school district or municipality," thus indicating a policy of the state at variance with the contention of the defendants in this case.

Chapter 39, page 90, Session Laws Arizona 1927.

In 1935 the legislature passed two acts for refunding state bonds and again expressly limited the refunding to bonded indebtedness "which has or hereafter may become optional for redemption prior to maturity."

Chapter 75, page 304 Session Laws 1935,

Chapter 74, page 299 Session Laws 1935.

Article 4, *Chapter* 10, *Arizona Code Annotated,* 1939, *originally enacted as Article* 4, *Chapter* 60, *Arizona Revised Code* 1928.

This is the statute which together with the resolutions of the board of supervisors and state loan commissioners passed in pursuance thereof, is the law that impairs the obligation of the contract created by the issuance of plaintiffs' bonds. While that part thereof which pertains to the refunding of state bonds is substantially a re-enactment of Chapter 1, Title 52, Arizona Revised Statute of 1913, which has been discussed above, it has been definitely settled by several decisions of the Supreme Court of Arizona that it must be construed as a new enactment and as an en-

tirely new measure and not a mere carrying forward of previous legislation. Unlike the Revised Statutes of 1913 which were a mere compilation of previously existing law and the Annotated Statutes of 1939, which were a like compilation, the Revised Statutes of 1928 were enacted as a new and single measure, comprising the entire statutory law of Arizona, of which each section must be considered as of equal validity with any other part of the Code.

> Sou. Pacific Co. v. Gila County, 56 Ariz. 499, 503; 109 Pac. (2nd) 610,
>
> Ellery v. State, 42 Ariz. 79, 83; 22 Pac. (2nd) 838,
>
> Hoy v. State, 53 Ariz. 440, 448; 90 Pac. (2nd) 623,
>
> State v. Stewart, 57 Ariz. 82; 111 Pac. (2nd) 70.

In the Southern Pacific Company case, supra, the Supreme Court of Arizona said,

> "The code of 1928 is not a compiled code as is that of 1939 but is a revised one and we have held all sections of a revised code are entirely new measures and not a mere carrying forward of some previous legislation and dependent for their validity solely upon the action of the legislature at that time and not on previous legislation."

Furthermore, while said Article 4, Chapter 60, made practically no change in that part of Chapter 1, Title

52, Revised Statutes of 1913, which provides for the refunding of state bonds, that part of said article which relates to the refunding of county, municipal and school district bonds was entirely rewritten with the evident purpose of changing the meaning and effect of the provision. As heretofore stated, the provision relating to refunding of county, municipal and school district bonds in Chapter 1, Title 52, Revised Statutes of 1913, was a part of Section 5260 which had been inserted in a territorial act by an act of Congress in 1890 and had been carried forward without change since that date. In the revision of 1928 this provision was entirely eliminated from Section 2653, which contained the remainder of said Section 5260, and a new Section 2654 was inserted. This new section is devoted exclusively to county, municipal and school district bonds and reads as follows:

> "2654—County or municipal bonds by State Loan Commissioners. The boards of supervisors of the counties and the municipal and school authorities, shall report to the state loan commissioners the bonded and outstanding indebtedness of the county, municipality or school district, and, upon the demand of said authorities, the commissioners shall provide for the redeeming or refunding of such indebtedness in the same manner as other state indebtedness, and issue bonds of the state for any indebtedness *allowed by law to be incurred* by such county, municipality or school district. Such bonds shall be issued *upon the faith and credit of the state only to the extent that it will cause to be levied and collected taxes* for the payment of the principal and interest of

such bonds, and pay the same when such bonds have been issued. The county, municipality, or school district shall pay into the state treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the state board of equalization, or on their failure by the state auditor, to be levied for the payment of the principal and interest of such bonds issued for such county, municipality, or school district, in the same manner as is herein provided for the payment of the principal and interest of state indebtedness." (Italics ours).

Section 2654 Revised Code 1928.

It will be noted that the provisions of this new section are materially different from the old Congressional rider in Section 5260 Revised Statutes of 1913, which reads as follows:

"The boards of supervisors of the counties, the municipal and school authorities, are hereby authorized and directed to report to the loan commissioners of the state their bonded and outstanding indebtedness, and said loan commissioners may, on written demand, require an official report from the board of supervisors of counties, the municipal or school authorities, of their bonded and outstanding indebtedness, and said loan commissioners shall provide for the redemming or refunding of the county, municipal and school district indebtedness, upon the official demand of said authorities, in the same manner as other state indebtedness, and they shall issue bonds for any indebtedness *now allowed, or that may be*

hereafter allowed by law, to said county, municipality, or school district upon official demand by said authorities. The county, municipality, or school district shall pay into the state treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the state board of equalization, or on their failure by the state auditor, to be levied for the payment of the principal of such bonds issued in redemption, or refunding, or of other bonds issued to such county, municipality, or school district, as herein provided, in the same manner as is herein provided for the payment of the principal and interest of state indebtedness, and, in addition, the interest paid by the state on such bonds." (Italics ours).

Part of Section 5260, Revised Statutes of Arizona 1913.

It will be noted that the 1928 section permits the refunding of indebtedness "allowed by law to be incurred" instead of merely "indebtedness now allowed or that may be hereafter allowed by law," to said county, municipality or school district as did the 1913 section, and that the 1928 section provides that "such bonds shall be issued upon the faith and credit of the state only to the extent that it will cause to be levied and collected taxes for the payment of the principal and interest on such bonds and pay the same when such bonds have been issued," whereas the 1913 section made no provision on this subject but allowed the bonds refunding such county, municipal or school district indebtedness to be governed by the provision for state bonds found in Section 5253 which provided, "* * and the faith and credit of the state is hereby

pledged for the payment of said bonds and the interest accruing thereon as herein provided." This difference was overlooked by the Supreme Court of Arizona in the case of Maricopa County v. Osborn, 125 Pac. (2nd) 703, 707. Under the 1928 act the state does not pledge its faith and credit to the payment of such refunding bonds but under Chapter 1, Title 52, of the Revised Statutes of 1913, such refunding bonds though issued for county, municipal or school district indebtedness were required to be supported by the pledge of the faith and credit of the state and hence were required to be issued as state obligations and were wholly prohibited by Section 5 of Article 9 of the state constitution, prohibiting the state from contracting debts except to supply deficits or failures in revenues or to meet expense not otherwise provided for. In line with the purpose of the new Section 2654, providing for the bonds refunding county, municipal or school district indebtedness to be issued in the name of the state but payable only out of revenues collected from taxes levied in the county, municipality or school district whose indebtedness was refunded instead of making them state obligations as had been the case before the territory became a state, a material change also was made in Section 5259 of the 1913 law which read as follows:

> "Providing that all moneys remaining in the interest fund after the payment of the interest and all moneys remaining in the redemption fund after all of said bonds shall have been paid and discharged shall be transferred by the state treasurer to the state general fund,"

This was changed in Section 2652 of the 1928 statute to read as follows:

> "Any money remaining in the interest fund after payment of interest and any money remaining in the redemption fund after all of said bonds have been paid and discharged shall be returned by the treasurer to the county, district or municipality whence it came."

Thus the fund out of which the refunding bonds were to be paid was no longer a state fund as it had been prior to the 1928 change. In addition to being secured by the pledge of the faith and credit of the state under the 1913 act, refunding bonds provided to be issued for state, county and municipal indebtedness were plainly required to be paid, both as to principal and interest, out of the annual tax levy upon the taxable property in the state, as provided by Section 5259 Revised Code 1913. In addition there was a special provision for payment of the interest out of the general fund if the interest fund was insufficient. (Section 5262 Revised Statutes of 1913). These provisions were plainly applicable to bonds issued to refund county, municipal and school district indebtedness as well as to bonds issued to refund state indebtedness under the act for there was nothing whatever in the act to differentiate the bonds issued for refunding county, municipal and school district indebtedness from the bonds issued for refunding state indebtedness and in territorial days the two classes of refunding bonds were issued in the same form as they must necessarily be under the statute as it then stood. After 1928, of course, Section 2654 of the Revised

Code of 1928 excluded refunding bonds issued for county, municipal and school district indebtedness from the obligations and tax levies provided for bonds issued for refunding state indebtedness, also Section 2654 of the 1928 act extended the refunding of county, municipal and school district indebtedness to indebtedness allowed by law to be incurred instead of limiting it to indebtedness existing when the original act was passed but allowed after the passage of the act.

THE RESOLUTIONS OF THE BOARD OF SUPERVISORS AND STATE LOAN COMMISSIONERS

Plaintiffs' bonds were not callable by virtue of any provision of the bonds or the law under which they were issued (T. 17, 27). The county that issued them had no power to call them and pay them off even if it had the necessary money in its treasury to do so but defendants contend that notwithstanding this want of power in the county said bonds were subject to refunding and, therefore, subject to call by action of the state loan commissioners upon demand of the board of supervisors (T. 36-38). This refunding process requires legislative action of the board of supervisors and the state loan commissioners which was supplied by the resolutions of the board of supervisors and the state loan commissioners (T. 50-52, also T. 170-184, T. 186-204 and T. 209, 210). These resolutions purport to be enacted under the authority of Article 4, Chapter 10, Arizona Annotated Code 1939 (T. 174, 176, 177, 181) and the Supreme Court of Arizona has upheld their enactment under said statute.

> Maricopa County v. Osborn, 136 Pac. (2nd) 270 (Adv.)

It follows that these resolutions were laws impairing the obligation of the contract created by the issuance of the bonds if that contract did not permit of their being called before their due dates.

ASSIGNMENTS OF ERROR

Assignment Number 1

(Submitted on behalf of both plaintiffs)

The District Court erred in entering summary judgment against the plaintiffs upon the motion of the defendants for the reason that the amended complaint stated a case for declaratory relief within the jurisdiction of the United States District Court, in that it showed an actual controversy between plaintiffs and defendants over the alleged right asserted by the defendants and in process of enforcement by them to call for payment before their maturity dates certain bonds of Maricopa County severally owned by plaintiffs and by such call of said bonds before maturity to violate the contracts of Maricopa County to pay interest on said bonds at the specified rates until their respective maturity dates, which contracts are set forth in said bonds and the coupons attached thereto as directed by resolutions of the board of supervisors adopted in compliance with the then existing statutes of the State of Arizona, and the authority granted by the electors of the county in voting said bonds, and said amended complaint further shows that said call of plaintiffs' bonds is proposed to be made by direction of the Supreme Court of Arizona under and by virtue of Article 4, Chapter 10, of Arizona Annotated Code of 1939, which first became a law of the State

of Arizona by enactment of the Revised Code of 1928, several years after plaintiffs' bonds were issued and under and by virtue of certain resolutions adopted by the Board of Supervisors of Maricopa County and the state loan commissioners of Arizona in pursuance of said Article 4, Chapter 10, Arizona Annotated Code of 1939, and that said Article 4, Chapter 10, Arizona Annotated Code of 1939, originally Article 4, Chapter 60, Arizona Revised Code of 1928, and said resolutions of said board of supervisors and said state loan commissioners, are laws impairing the obligations of the contracts created by the issuance of plaintiffs' bonds. Plaintiffs' amended complaint thus shows that the federal courts have jurisdiction under Section 10 of Article 1, and the Fourteenth Amendment to the Federal Constitution, and it is the duty of said courts to exercise their independent judgment as to whether contracts were created by the issuance of plaintiffs' bonds, what is the meaning and effect of such contracts, and whether they are being impaired by subsequently enacted laws, and that it appears from plaintiffs' amended complaint and the statutes of the State of Arizona under and in pursuance of which plaintiffs' bonds were issued, that contracts were made by Maricopa County under authority granted to it by the state legislature to pay definite rates of interest on both issues of said bonds until the maturity dates specified in said bonds without any reservations to call said bonds and stop the payment of interest thereon before their maturity. Said contracts were expressly authorized by Chapter 2 of Title 52, Revised Statutes of 1913, and Chapter 1 of Title 52, Revised Statutes of 1913, was not applicable to said contracts because,

(a) Said Chapter 1 was originally an Act of Congress, passed in the year 1890, for the refunding of certain territorial indebtedness then existing, and that the authority to fund or refund indebtedness under said act and supplements thereto expired January 1, 1897, and such authority was not revived by the re-enactment of said statute upon statehood;

(b) Said statute did not authorize the refunding of bonds which were not due or redeemable according to their terms without the consent of the holders of such bonds;

(c) Said Act of Congress of 1890 provided for the refunding of county bonds with territorial bonds and, even though re-enacted, upon statehood, by the first legislature of Arizona, was inoperative by reason of Section 5 of Article 9 of the Arizona State Constitution which prohibits the creation of state indebtedness for such purpose;

(d) If said statute had or could have authorized a redemption of county bonds prior to their maturity, such power was repealed by the later enactment of Chapter 2, Title 52, Revised Statutes of 1913, by reason of inconsistent provisions contained in said Chapter 2, as well as by the express provisions of the statutes of Arizona providing that a later statute repeals a prior statute covering the same subject, even though the two statutes are not inconsistent.

(e) The bonds held by plaintiffs contain positive covenants and agreements of Maricopa County to pay interest thereon at the specified rates until their maturity dates and these covenants and agreements

were ratified and approved by the state legislature by Chapters 54 and 86 of Arizona Session Laws 1921, ratifying and approving said bonds after the form of said bonds containing said covenants and agreements had been made a matter of public record, thereby precluding the redemption and call of said bonds in violation of said covenants and agreements.

Plaintiffs' amended complaint further shows that rights guaranteed to them by the Constitution of the United States have been violated and impaired by resolutions of the board of supervisors of Maricopa County and of the state Loan commissioners, enacted under authority of Article 4, Chapter 10, Arizona Annotated Code of 1939. The failure of the District Court to pass upon and decide these federal questions independently of the decisions of the Supreme Court of Arizona rendered in suits to which the plaintiffs were not parties or privies, deprived the plaintiffs of property without due process of law.

The amount involved in this case exceeds the sum of Three Thousand ($3,000.00) Dollars, as to each plaintiff.

The affidavits filed in support of the motion for summary judgment presented no defense to the amended complaint. The facts show that jurisdiction of the federal courts is properly invoked, that a case is presented for the exercise of independent judgment of the federal courts upon the contracts involved, and the exercise of such independent judgment must necessarily result in granting the relief sought by the plaintiffs.

Assignment Number 2

(Submitted on behalf of plaintiff, State of Washington)

The District Court erred in entering summary judgment against plaintiff, State of Washington, for the reason that the amended complaint stated a case for declaratory relief within the jurisdiction of the United States District Court in that it showed an actual controversy between plaintiff, State of Washington, and defendants, over the alleged right asserted by defendants, and in process of enforcement by them to call for payment before their maturity dates, certain bonds of Maricopa County owned by said plaintiff, and by such call of said bonds before maturity, to violate the contracts of Maricopa county to pay interest on said bonds at the specified rates until their respective maturity dates, which contracts are set forth in said bonds and the coupons attached thereto as directed by resolutions of the board of supervisors adopted in compliance with the then existing statutes of the State of Arizona, and the authority granted by the electors of the county in voting said bonds, and plaintiff, State of Washington, as a sovereign state, by virtue of Section 2 of Article III of the Constitution of the United States, is entitled to have the controversy between it and the defendants which is alleged in the amended complaint, determined by the independent judgment of the Federal Courts on the basis of equity and fair dealing between sovereign states, rather than by the decision of the Supreme Court of the State of Arizona in the mandamus suits in which plaintiff, State of Washington, had no opportunity to be heard. That

the consideration due from the Federal Courts to sovereign states applies in cases arising in the district court as well as original suits in the United States Supreme Court; that it was the duty of the United States District Court and is the duty of the Circuit Court of Appeals to exercise an independent judgment as to whether contracts were created by the issuance of plaintiffs' bonds, what are the meaning and effect of said contracts, and whether they are being impaired by subsequently enacted laws and that it appears from plaintiffs' amended complaint and the statutes of the State of Arizona under and in pursuance of which plaintiffs' bonds were issued that contracts were made by Maricopa County under authority granted to it by the state legislature to pay definite rates of interest on both issues of said bonds until the maturity dates specified in said bonds without any reservation to call said bonds and stop the payment of interest thereon before their maturity. Said contracts were expressly authorized by Chapter 2, of Title 52, Revised Statutes of 1913, and Chapter 1, of Title 52, Revised Statutes of 1913, was not applicable to said contracts because,

(a) Said Chapter 1 was originally an act of Congress passed in the year 1890, for the refunding of certain territorial indebtedness then existing and that the authority to fund or refund indebtedness under said act and supplements thereto expired January 1, 1897, and such authority was not revived by the reenactment of said statute upon statehood;

(b) That said statute did not authorize the refunding of bonds which were not due or redeemable according to their terms without the consent of the holders of such bonds;

(c) That said Act of Congress of 1890 provided for the refunding of county bonds with territorial bonds and, even though re-enacted, upon statehood, by the first legislature of Arizona, was inoperative by reason of Section 5 of Article 9 of the Arizona State Constitution, which prohibits the creation of state indebtedness for such purpose;

(d) That if said statute had or could have authorized a redemption of county bonds, prior to their maturity, such power was repealed by the later enactment of Chapter 2, Title 52, Revised Statutes of 1913, by reason of inconsistent provisions contained in said Chapter 2, as well as by the express provisions of the Statutes of Arizona providing that a later statute repeals a prior statute covering the same subject, even though the two statutes are not inconsistent.

(e) The bonds held by plaintiffs contain positive covenants and agreements of Maricopa County to pay interest thereon at the specified rates until their maturity dates and these covenants and agreements were ratified and approved by the state legislature by Chapters 54 and 86 of Arizona Session Laws of 1821, ratifying and approving such bonds after the form of said bonds containing said covenants and agreements had been made a matter of public record thereby precluding the redemption and call of said bonds in violation of said covenants and agreements.

Plaintiffs' amended complaint further shows that rights guaranteed them by the Constitution of the United States have been violated and impaired by resolutions of the board of supervisors of Maricopa

County and of the state loan commissioners, enacted under authority of Article 4, Chapter 10, Arizona Annotated Code of 1939. That failure of the District Court to pass upon and decide these federal questions, independently of the decisions of the Supreme Court of Arizona rendered in suits to which the plaintiffs were not parties or privies, deprived the plaintiffs of property without due process of law.

The amount involved in this case exceeds the sum of Three Thousand ($3,000.00) Dollars, as to each plaintiff.

The affidavits filed in support of the motion for summary judgment presented no defense to the amended complaint. The facts show that jurisdiction of the Federal Courts is properly invoked, that a case is presented for the exercise of independent judgment of the Federal Court upon the contracts involved, and the exercise of such independent judgment must necessarily result in granting the relief sought by plaintiffs.

ARGUMENT

Preliminary

Assignment No. 1 is applicable to both plaintiffs. Assignment No. 2 is applicable to plaintiff, State of Washington. The following argument is applicable to Assignment No. 1, except where reference is made to Assignment No. 2.

Two primary questions are presented for decision.

1. *Have the federal courts jurisdiction to exercise*

their independent judgment on the merits of this case under the decision of the Supreme Court in Erie R. Co. vs. Tompkins notwithstanding the opinions of the state Supreme Court in the two mandamus cases?

2. *What is the true interpretation of the contracts created by the issuance of plaintiffs' bonds?*

The first question is divided into two parts, viz. what is the jurisdiction of the federal courts on the facts alleged in the amended complaint (a) in the case of an ordinary plaintiff and (b) where plaintiff is a sovereign states?

I

The federal courts have jurisdiction and are required to exercise their independent judgment on the merits of this case notwithstanding the opinions of the State Supreme Court in the two mandamus suits:

1. The amended complaint presents a case of impairment of the obligation of contracts by subsequently enacted legislation.

a. The amended complaint formally invokes federal jurisdiction upon the ground that the case arises under the Constitution and laws of the United States (T. 4).

b. The amended complaint alleges the creation of contracts by the issuance of plaintiffs' bonds (T. 7-30).

These contracts are based upon the statutes

existing when the bonds were issued, the proceedings taken in pursuance of said statutes and in addition thereto the ratification of the bonds in the form in which they were issued by the legislature of the state (T. 19, 28).

c. It appears that the parties are agreed that contracts were created by the issuance of the bonds but differ as to the meaning and effect of those contracts, plaintiffs alleging that said bonds were to run for definite terms (T. 11-12, 21-22) and that there was no provision whatever for calling them before their maturity dates (T. 17, 27) and that plaintiffs paid large premiums for the right to collect interest thereon at the specified rates until their maturity dates (T. 20-21, 29-30). Defendants assert that a right to redeem and refund said bonds was given at the time of their issuance by the provisions of Chapter 1, Title 52, Sections 5251-5265 of Revised Statutes of 1913 and, hence, the contracts created by their issuance made them subject to refunding and calling in the manner proposed (T. 38-40) and in this position defendants are sustained by the decisions of the Supreme Court of Arizona in the cases of Maricopa County v. Osborn, 125 Pac. (2nd) 703 and Maricopa County v. Osborn, 136 Pac. (2nd) 270 (adv.) It thus appears that the controversy involves principally the interpretation of the contracts created by the issuance of the bonds which does not present a question of federal jurisdiction but a question of the merits to be independently determined by the federal courts in the exercise of the jurisdiction conferred

upon them by the federal constitution and statutes.

d. The amended complaint alleges that plaintiffs' contract rights to collect the interest on their bonds are threatened to be destroyed by proceedings now pending which are being taken under statutes of the state and resolutions of the board of supervisors and state loan commissioners enacted subsequently to the issuance of plaintiffs' bonds (T. 30-34). Said proceedings have been upheld by the Supreme Court of Arizona.

Maricopa County v. Osborn, 136 Pac. (2nd) 270 (adv.)

e. It appears that the subsequently enacted statute and resolutions which plaintiffs claim to be the laws impairing their contracts, are

(1) Article 4 Chapter 10 Arizona Code Annotated 1939 and

(2) Resolutions of the board of supervisors and state loan commissioners (T. 170, 172, 196, 197, 199, 202, 209). Said resolutions were adopted pursuant to said Article 4, Chapter 10, Arizona Annotated Code 1939 (T. 176, 177, 179).

(1) The amended complaint alleges that Article 4, Chapter 10, Arizona Annotated Code was originally enacted as a new statute by its inclusion in the Arizona Revised Code of 1928 (T. 36). That said Article 4, Chapter 10, was such a new enactment cannot be successfully denied (see

pages 36-43 of this brief). The changes made in the former Chapter 1, Title 52, Revised Statutes of 1913 are material and the nature of the changes are convincing that the purpose thereof was to make an effective statute of what had been waste statutory verbiage since 1897. Even if said Chapter 1, Title 52, had been incorporated into the 1928 Revised Code without change in wording such incorporation would have materially changed its meaning and made a new statute of it. As it existed in the 1913 Revised Statutes it was part of a compilation of statutes. It was an older statute than Chapter 2, Title 52, (see pages 31-33 of this brief) and any of its provisions that were inconsistent with said Chapter 2 were undoubtedly repealed. The Supreme Court of Arizona has declared that, "It is the universal rule of statutory construction that when a subsequent act of the legislature is in conflict with a prior act it by implication repeals so much of the prior act as is in conflict with the latter law."

City of Bisbee v. Cochise County, 44 Ariz. 233, 241, 36 Pac. (2nd) 559,

Biles v. Robey, 43 Ariz. 276, 281, 30 Pac. (2nd) 841,

Irvine v. Frohmiller, 58 Ariz. 391, 397, 120 Pac. (2nd) 404,

State Board of Health v. Frohmiller, 42 Ariz. 231, 235, 23 Pac. (2nd) 941,

State v. Angle, 54 Ariz. 13, 20, 91 Pac. (2nd) 705

See also:

59 Corpus Juris, Sec. 514, p. 910,

25 Ruling Case Law, Sec. 167, p. 914.

So, under the 1913 Revised Statutes the contention that a provision of Chapter 1, Title 52, modified a provision of Chapter 2 of said title could not be reasonably made, but after the incorporation of said two chapters in the Revised Code of 1928, it could be reasonably argued that since the two chapters were now on an equality and must be construed together and harmonized (see page 37 of this brief), the provisions of Chapter 2, providing for definite maturity dates must be held to yield to the provisions of Chapter 1, authorizing refunding of all bonds.

The argument just made is strengthened by Section 6 of Chapter 10, Session laws of 1907 reenacted by Chapter 19, of the Third Special Session of the First Legislature (Sec. 5553 R.S. of 1913) which unquestionably had the effect of causing Chapter 2, Title 52, to repeal Chapter 1 of said title, not only as to all provisions inconsistent with said Chapter 2, but as to all provisions covering the same subject matter. Under said Section 6, the provision in Chapter 2, providing for redeeming bonds after maturity, certainly repealed any provision in Chapter 1 alleged to provide for redeeming the same bonds

both before and after maturity, (see pages 32 and 33 of this brief) but if both chapters had gone unchanged into the 1928 Revised Code (which they did not) it might be argued that they were thereafter on an equality and that to harmonize them Chapter 1 might be given the effect of modifying Chapter 2 (see page 36 of this brief).

We think the considerations we have just set forth irrefutably demonstrate that Article 4, Chapter 10, Arizona Annotated Code 1939, formerly Article 4, Chapter 60, Revised Code of 1913, was enacted as a new statute in 1928, becoming effective July 1, 1929.

(2) While we believe we have demonstrated above that the act of the legislature under which defendants claim the right to call plaintiffs' bonds was enacted subsequent to the issuance of the bonds, such demonstration is not necessary to provide a federal question in this case. The resolutions of the board of supervisors and state loan commissioners are in themselves laws impairing the obligations of the contracts created by the issuance of plaintiffs' bonds (see pages 43-44 of this brief). Plaintiffs are the holders of valid bonds and coupons and their right to collect the same is undisputed. Defendants' contention is that the board of supervisors may take official action requiring the state loan commissioners to refund plaintiffs' bonds by issuing state refunding bonds to take the place of plaintiffs' bonds, such refunding bonds of the state to be payable

by the state out of tax levies imposed upon the county. To this power of the Board of Supervisors and state loan commissioners to issue these state refunding bonds, the power to call plaintiffs' bonds is claimed to be incidental. It is plain that without the issuance of these state refunding bonds no power exists to call plaintiffs' bonds. The issuance of such bonds is the exercise of the power of legislation.

State v. Osborn, 51 Pac. 837 (Nev.),

Board of Commissioners v. Aetna Life Ins. Co., 90 Fed. 222,

Keigley v. Bench, 89 Pac. (2nd) 480, (Utah),

People v. Graham, 230 Pac. 277 (Colo.)

Abbott Public Securities Sec. 434, 443 pp. 859, 873.

Since calling plaintiffs' bonds requires the exercise of legislative power, it is clear that the resolutions necessary for the purpose are legislative acts or laws within the meaning of the impairment of obligation of contract provision. Examination of the proceedings adopted by defendants (T. 167,217, 114-127) serves to show what is necessary to accomplish the refunding and that somewhat elaborate legislation is necessary.

Boards of Supervisors are the legislative bodies of counties.

Sec. 17-309 Arizona Code Annotated, 1939.

Resolutions of municipal corporations are often held to be laws impairing the obligation of contracts within the meaning of Section 10, Article 1, of the United States Constitution.

Northern Pac. R.R. Co. v. Duluth, 208 U. S. 583, 590, 52 Law ed 630, 28 Supt. Ct. Rep. 341.

Mercantile Trust Co. v. Columbus, 203 U. S. 311, 320, 51 Law ed. 198, 27 Sup. Ct. Rep. 83,

Walla Walla v. Walla Walla Water Co., 172 U. S. 1, 10, 43 Law ed. 341, 19 Sup. Ct. Rep. 77,

Murray v. Charleston, 96 U. S. 432, 443, 24 Law ed. 760.

So also are actions of railroad commissions and other subordinate bodies.

Grand Trunk R.R. Co. v. Indiana R.R. Commission, 221 U. S. 400, 403, 55 Law ed. 786, 31 Sup. Ct. Rep. 537,

Lake Erie and Western R. Co. v. Public Utility Commission, 249 U. S. 422, 63 Law ed. 684, 39 Sup. Ct. Rep. 345.

See also:

Atlantic Coast R.R. Co. vs. Goldsboro, 232 U. S. 548, 555, 58 Law ed. 721, 34 Supt. Ct. Rep. 364,

Williams v. Bruffy, 96 U. S. 176, 183, 24 Law ed. 716.

2. The decision of the state Supreme Court in the two mandamus cases does not oust the jurisdiction of the Federal Courts.

a. In a suit where the jurisdiction is based upon the charge that a contract is being impaired by a law of the state, the federal courts while giving due weight to the decision of the state courts must make independent determination according to their own judgment whether a contract exists, what are its terms, and whether it is being impaired by a law of the state.

Appleby v. New York, 70 L. ed. 992, 999, 271 U. S. 364, 46 Sup. Ct. Rep. 569,

Davis v. Wechsler, 68 L. ed. 143, 145, 263 U. S. 22, 44 Sup. Ct. Rep. 13.

In the Appleby case, supra, Chief Justice Taft states the rule as follows:

> "The plaintiffs in their writ of error charge that the judgment of the supreme court of New York as affirmed by the court of appeals has interpreted and enforced the Acts of 1857 and 1871, in such a way as to impair the obligation of the contract in their deeds.
>
> "The questions we have here to determine are, first, was there a contract, second, what was its proper construction and effect, and, third, was its obligation impaired by subsequent legislation as enforced by the state

court? These questions we must answer independently of the conclusion of that court. Of course, we should give all proper weight to its judgment, but we cannot perform our duty to enforce the guaranty of the Federal Constitution as to the inviolability of contracts by state legislative action unless we give the questions independent consideration. It makes no difference what the answer to them involves, whether it turns on issues of general or purely local law, we cannot surrender the duty to exercise our own judgment. In the case before us, the construction and effect of the contract involved in the deeds and covenants depends chiefly upon the extent of the power of the state and city to part with property under navigable waters to private persons, free from subsequent regulatory control of the water over the land and the land itself. That is a state question, and we must determine it from the law of the state, as it was when the deeds were executed, to be derived from statutes then in force and from the decisions of the state court then and since made; *but we must give our own judgment derived from such sources and not accept the present conclusion of the state court without inquiry.*" (Italics ours).

and in the Davis case, supra, Mr. Justice Holmes states the following:

"We are of the opinion that the judgment

must be reversed. Whatever springes the state may set for those who are endeavoring to assert rights that the state confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. Even if the order went only to the venue, and not to the jurisdiction of the court, each Director General in turn plainly indicated that he meant to adopt the position of his predecessor, and to insist that the suit was brought in the wrong county. His lawful insistence cannot be evaded by attempting a distinction between his appearance and his substantially contemporaneous adoption of the plea. Indeed, when the law requires him to unite his defense on the merits, which imports an appearance pro hac vice, with his preliminary plea, it is hard to understand how any effect could be attributed to the statement that he appeared..*The state courts may deal with that as they think proper in local matters, but they cannot treat it as defeating a plain assertion of Federal right.* The principle is general and necessary. Ward v. Love County, 253 U. S. 17, 22, 64 L. ed. 751, 758, 40 Sup. Ct. Rep. 419. If the Constitution and laws of the United States are to be enforced, this court cannot accept as final the decision of the state tribunal as to what are the facts alleged to give rise to the right or to bar the assertion of it even upon local grounds. Creswill v. Grand Lodge, K, (25) P. 225 U. S. 246, 56 L. ed. 1074, 32 Sup. Ct. Rep. 822.

> This is familiar as to the substantive law, and for the same reasons it is necessary to see that local practice shall not be allowed to put unreasonable obstacles in the way. See American R. Exp. Co. v. Levee, decided this day (263 U. S. 19, ante, 140, 44 Sup. Ct. Rep. 11)." (Italics ours).

b. The Supreme Court has pointed out that in determining whether a contract is in fact being impaired, it is not limited to the particular language of the state court, but must look at the whole situation to determine for itself whether a contract is actually being impaired.

> La. R.R. and Navigation Co. v. New Orleans, 235 U. S. 164, 170, 59 Law ed. 175, 35 Sup. Ct. Rep. 62.

c. The decision of the state court as to the interpretation and effect of the law which it is charged impairs the obligation of a contract, will be accepted, but a decision of the state court as to whether there was a contract and what were its terms, and as to whether it has been impaired, are federal questions which the federal courts must determine independently.

> Northern Central R.R. Co. v. Maryland, 187 U. S. 258, 266, 47 Law ed. 167, 23 Sup. Ct. Rep. 62,
>
> Cone v. Rorick, 112 Fed. (2) 894, 897.

In the Northern Central Railroad Case, supra, the court says the following:

> "Where a contract is claimed to arise from a state law and it is held below that a subsequent statute has repealed the alleged contract and effect is thereby given to the subsequent law, the mere question whether the alleged contract has been repealed by the subsequent law is a state and not a federal question. In such a case this court concerns itself not with the question whether the state law, from which the contract is asserted to have arisen, has been repealed, but proceeds to determine whether the repeal was void because it produced an impairment of the obligations of the contract within the purview of the Constitution of the United States. In other words, where the state court has given effect to a subsequent law, this court decides whether such effect, so given by the state court, violates the Constitution of the United States."

d. When the decision of the state Supreme Court has the effect of putting a subsequently adopted state statute or municipal ordinance or resolution into effect the fact that this result is arrived at by the state court, holding that the alleged contract does not exist or does not have the effect claimed, does not exclude the jurisdiction of the federal courts. In such cases the federal courts have jurisdiction and must independently determine the true meaning and effect of the alleged contract.

In the lower court defendants contended that

since the state Supreme Court in the mandamus cases had put its decision upon the ground that the contract created by plaintiffs' bonds permitted the redemption thereof in the manner proposed, no question of impairment of contract was presented. The contention is unsound. The object of both of the mandamus suits was to enforce the subsequent statute and the resolutions adopted thereunder (see petition for writ of mandamus T. 167-218). The judgments of the state Supreme Court ordered defendants' resolutions adopted in pursuance of Article 4, Chapter 10, the subsequent law to be put into operation.

Maricopa County v. Osborn, 125 Pac. (2nd) 703,

Maricopa County v. Osborn, 136 Pac. (2nd) 270 (adv.)

It is thus a clear case of where the decision of the state Supreme Court gives effect to the subsequent law but in doing so declares that plaintiff had no such contract as he asserts. The opinion of the state Supreme Court on this question of the meaning of the contract is not binding upon the federal courts. Numerous cases among which are the following so hold:

In the case of

University v. People, 99 U. S. 309, 320, 25 Law ed. 387

the State of Illinois under the constitution of 1848, by a statute enacted by the legislature in

1855, had granted exemption from taxation to the property of Northwestern University. The constitution of 1870 contained a provision limiting the exemption from taxation to such property as was used for school, religious, etc. purposes. Prior to the adoption of this language in the constitution, all of the property owned by the university had been exempted from taxation. After the adoption of said constitution under a statute enacted in 1872 it was attempted to tax property of the university not being used for school or religious purposes but which was leased by the university to others. The Supreme Court of Illinois held that the Statute of 1855 properly construed with reference to the state Constitution of 1848, limited the exemption to property used for school and religious purposes. On writ of error to the Supreme Court of the United States it was contended that no federal question was involved for the reason that the only question presented was the decision of a court construing a contract or a statute and that no law of the state impaired the obligation of the contract as so construed. The Supreme Court of the United States rejected this contention and held that the taxing officers were proceeding to assess the university's lands for taxation under the Constitution of 1870 and the law of 1872, and that since by this subsequent constitution and law plaintiff's alleged rights were being violated, a question was presented for the determination by the federal courts as to whether those rights were as claimed and whether the contract admitted by both parties to exist in some form, constituted an exemption of all the

university's property, or only that part of it which was used for school and religious purposes. On the merits said court held that the construction of the statute by the Supreme Court of Illinois was erroneous, that the contract of exemption extended to all property owned by the university and, hence, the Act of 1872 impaired the obligation of the university's contract.

This same principle has been frequently applied.

In the case of

> Louisiana R.R. and Navigation Co. v. New Orleans, 235 U. S. 164, 170, 59 Law ed. 175, 35 Sup. Ct. Rep. 62

the railroad company claimed certain rights under a contract from the city of New Orleans. The city brought suit under subsequently enacted ordinances to restrain the railway company from proceeding under the earlier ordinance of the city, claiming that the contract provided for by the earlier ordinance contained a suspensive condition and that this condition had been impossible of realization and the contract had of consequence fallen through. The railway company defended upon the ground that the subsequent ordinance adopted by the city violated the railway company's contract. The Supreme Court of the state rendered judgment for the city. On writ of error the city moved to dismiss upon the ground that the state court gave no effect to the subsequent ordinance but based its decision upon

the ground that the alleged contract no longer existed. The Supreme Court of the United States rejected this contention, saying:

> "It is equally well settled that where the state court does give effect to later legislation which operates to impair the obligation of a contract if one exists, this court is not deprived of jurisdiction because the state court has put its decision upon the ground that the contract was not made or that it was invalid, or that it has become inoperative. In such a case this court must determine for itself whether there is an existing contract. Otherwise, although it was the aim of the suit and the effect of the judgment to give vitality and expression to the subsequent law and this court might be of the opinion that there was a valid contract which thereby would be impaired, it would be powerless to enforce the constitutional guarantee (citing authorities) and in determining whether effect has been given to the later statute this court is not limited to the mere consideration of the language of the opinion of the state court (citing authorities).

In the case of

> Detroit United Ry Co. v. Michigan, 242 U. S. 238, 247, 61 Law ed. 268, 37 Sup. Ct. Rep. 87

the City of Detroit granted a franchise to a street railway company. Other franchises were grant-

ed to other companies in suburban territory. These were all acquired by the Detroit United Railway. The suburban territory was annexed to the city. The original city franchise fixed lower rates than those granted in the suburban territory. After the suburban territory was annexed to the city, it was contended by the city that the annexation statutes had the effect of making the original rates applicable to all the territory, while the railway company claimed the right to charge the higher rates in the suburban territory permitted by the franchises granted for that territory before the annexation. Certain suits brought by the city to compel the acceptance of the city's contention were sustained by the Supreme Court of the state. In the Supreme Court of the United States, on writ of error, it was contended by the city that the judgments of the Supreme Court of the state were based solely upon the meaning that it attributed to the original ordinances without reference to any subsequent legislation; that hence no federal question was presented. The court rejected the contention in the following language:

> "It is true, as this court has many times decided, that the 'contract clause' of the Constitution is not addressed to such impairment of contract obligaions, if any, as may arise by mere judicial decisions in the state courts without action by the legislative authority of the state. Cross Lake Shooting and Fishing Club v. Louisiana, 224 U. S. 632, 639; Frank v. Mangum, 237 U. S. 309, 344.

"But in this case there were state laws passed subsequent to the making of the alleged contracts in question, in the form of the legislation of 1905 and 1907 extending the corporate limits of the city. And it is not correct to say that the decisions of the state court turned upon the mere meaning of the contracts without reference to these subsequent laws. Assuming what in effect is conceded, that the village and township franchises constituted contracts within the protection of the Federal Constitution, the force of the decisions was to abrogate the rights acquired by plaintiff in error through its acquisition of the suburban lines, not merely because of the assent of the owners of the city lines to the ordinances of January 3, 1889, but because of the combined effect of those ordinances and the acts of the legislature of Michigan that thereafter extended the city limits. It is true that no question is or can be here made respecting the authority of the legislature to add new territory to the city; and it is likewise true that the annexation acts contain no reference to existing contracts, nor any specific mention of the subject-matter of street railway rights. But, in cases of this character, the jurisdiction of this court does not depend upon the form in which the legislative action is expressed, but rather upon its practical effect and operation as construed and applied by the state court of last resort, and this irrespective of the process of reasoning by which the deci-

sion is reached, or the precise extent to which reliance is placed upon the subsequent legislation. McCullough v. Virginia, 172 U. S. 102, 116, 117; Houston & Texas Central R. R. Co. v. Texas, 177 U. S. 66, 77; Terre Haute & C. R. R. Co. v. Indiana 194 U. S. 579, 589; Hubert v. New Orleans, 215 U. S. 170, 175; Fisher v. New Orleans, 218 U. S. 438, 440; Carondelet Canal Co. v. Louisiana, 233 U. S. 362, 376; Louisiana Ry. & Nav. Co. v. New Orleans 235 U. S. 164, 170. The necessary operation of the decisions under review is to give an effect to the annexation acts that substantially impairs the alleged contract rights of plaintiff in error as they theretofore stood; and it makes no difference that that result was reached in part by invoking the provisions of another agreement supposed to be binding upon plaintiff in error. Whether the agreement thus invoked, when properly construed, has the effect attributed to it, is a question that touches upon the merits, and not upon the jurisdiction of this court."

In

McCullough v. Va., 172 U. S. 102, 116, 43 Law ed. 382, 19 Sup. Ct. Rep. 134

the State of Virginia in 1871 passed an act for refunding the public debt and provided that the coupons attached to refunding bonds should be receivable after their maturity for payment of taxes. The provision proved burdensome to the

state which thereafter sought by various acts of legislation to destroy or limit the use of the coupons to pay the taxes. The Supreme Court of Virginia held that the act of 1871 granting the privilege was void. On writ of error to the Supreme Court of the United States it was contended that since the court of appeals of Virginia did not consider the subsequent legislation passed by the state in connection with the contract created in 1871, but limited itself to a consideration of the act of 1871 and adjudged it void, no federal question was involved. The court rejects the contention saying the following:

> "It is true the court of appeals in its opinion only incidentally refers to statutes as subsequent to the act of 1871 and bases its decision distinctly upon the ground that this act was void so far as it relates to the coupon contract but at the same time it is equally clear that the judgment did give effect to the subsequent statutes and it has been repeatedly held by this court that in reviewing the judgments of the courts of a state we are not limited to a mere consideration of the language used in the opinion but may examine and determine what is the real substance and effect of the decision."

In Houston and Central R. R. Co. v. Texas, 177 U. S. 66, 77, 44 Law ed. 673, 20 Sup. Ct. Rep. 545

the State of Texas sued the railroad company to recover the amount due on certain bonds issued

by the railroad company to the state. The state had passed a statute after the issuance of the bonds permitting payment of interest on the bonds in state treasury warrants or state bonds and later passed another statute that such treasury warrants or state bonds should be received only from the railroad companies who received them at par for freight or passage at the prices or rates established by law. The railroad company acquired treasury warrants in reliance on these statutes. After the passage of another act in 1870 payments made by such warrants were strickent out and further payments demanded from the railroad company upon the basis that the acts under which these warrants had been received were invalid. The state court held that the original acts were void as in violation of the state constitution and on writ of error to the Supreme Court of the United States the contention was made that there was no federal question for the reason that the decision of the State Supreme Court involved merely the validity of the original legislation. The contention was rejected by the Supreme Court in the following language:

> "Thus we see that, although the decision of the state court was based upon the ground that the warrants in which these payments were made had been issued in utter violation of the state constitution, and were hence void, and that no payments made with such warrants had any validity, and although this ground of invalidity was arrived at without any reference made to the act of 1870

> yet the necessary consequence of the judgment was that effect was thereby given to that act, and in a manner which the company has always claimed to be illegal and unwarranted by the act when properly construed. The company has never accepted such a construction, but on the contrary has always opposed it, and raises the question in this proceeding at the very outset. Upon these facts this court has jurisdiction, and it is its duty to determine for itself the existence, construction and validity of the alleged contract, and also to determine whether, as construed by this court, it has been impaired by any subsequent state legislation to which effect has been given by the court below."

In the case of

> Bridge Proprietors v. Hoboken County, 1 Wallace, 116, 144, 17 Law ed. 571

the plaintiffs were granted a right to construct a toll bridge under the Act of 1790, which prohibited the erection of any other bridges across the same river within certain limits. By the act of 1860 the New Jersey legislature granted a right to build a railroad bridge to the defendants, inside of the limits prohibited by the Act of 1790. The plaintiffs brought suit to enjoin the erection of the bridge by the defendants. The state court dismissed the bill on the pleadings. In the Supreme Court of the United States on writ of error it was contended that no federal question was involved. The court says:

"But there is a misconception as to what was construed in this case by the State court. It is very obvious that the statute of 1860 was not construed. No doubt is entertained by this court, none could have been entertained by the state court, that it was intended by the framers of that act to authorize the defendants to build the railroad bridge which they were building, and which plaintiffs sought to enjoin. The act which was really the subject of construction was the act of 1790, under which plaintiffs claim. For if that act and the proceedings under it amount to a contract, and that contract prohibited the kind of structure which the defendants were about to erect under the act of 1860 then the latter act must be void as impairing that contract. If on the other hand the first act and the agreement under it was not a contract, or if being a contract it did not prohibit the erection of such a structure as that authorized by the act of 1860, the latter act was valid, because it did not impair the obligation of a contract. It was then the act of 1790 which required construction, and not that of 1860 in order to determine whether the latter was valid or invalid.

"In the case of the Jefferson Branch Bank v. Skelly,* this court says: 'Of what use would the appellate power of this court be to the litigant who feels himself aggrieved by some particular state legislation, if this court

> could not decide independently of all adjudication by the Supreme Court of a State, whether or not the instrument in controversy was expressive of a contract and within the protection of the Constitution of the United States, and that its obligation should be enforced notwithstanding a contrary conclusion by the Supreme Court of a state? It never was intended, and cannot be sustained by any course of reasoning, that this court should or could, with fidelity to the Constitution of the United States, following the Supreme Court of a State in such matters, when it entertains a different opinion.'
>
> *1 Black 436"

In the case of

> Carondelet Canal Co. v. Louisiana, 233 U. S. 362, 376, 58 Law ed. 1001, 34 Sup. Ct. Rep. 627

the State of Louisiana brought a suit to recover certain property from the canal company. The state's claim was based upon legislative acts which vested the property in the canal company with power in the state to take possession of the canal and its appurtenant property upon termination of the company's existence. The act of 1906 appointed a board of control to take possession of the property. The Supreme Court of the state decided in favor of the state. On writ of error to the Supreme Court of the United States on motion to dismiss by the state the Supreme Court of the United States said:

"The State, as we have said, made a motion to dismiss on two grounds, one of which we have decided; the other is that no Federal question is presented by the record, the canal company failing to distinguish, it is contended, between a subsequent act of the legislature impairing the contract and the decision of the court construing it. The question then is whether the act of 1906, appointing the board of control and investing it with powers, was an act which impaired the obligation of the contract, and in the solution of the question we must assume that the act of 1858 constituted a contract between the State and the canal company. The negative of the question is urged by the Attorney General in an argument of strength in which he contends the court did not consider or give any effect to the act of 1906 but considered only the act of 1858 and decided that the canal company did not acquire the rights under it which the company contends for. In other words, decided that the act of 1858 gave no rights which the State did not already have and which it was entitled to possess upon the expiration of the charter of the canal company. There is, as we have said, strength in the contention, but, of course, the fact that the Supreme Court did not refer to the act of 1906 does not put it aside from consideration. If it was the assertion of legislative power against the contract of the company and a legislative provision against the obligation of the contract, and

> was an essential, although unmentioned, element of the decision under review, it is a basis for the Federal question set up. Nor need bad motives be imputed to the legislature. It is not the motive which caused the enactment of the law which is of account, but the effect of the enactment, impairing the rights resting in the contract. And this, we think, was the effect of the act of 1906. It was treated as an important factor in the State's petition in both the charging part and the prayer. The Board of Control had something else to do besides to wait. It was an agency of invasion and it was by its especial command that the Attorney General made demand upon the company."

In

> Murray v. Charleston, 96 U. S. 432, 433, 24 Law ed. 760

the City of Charleston sold certain stock wihch was in legal effect an ordinary money bond on which it agreed to pay a certain rate of interest. Thereafter it passed certain taxing ordinances by which it imposed a tax on said stock and provided that the amount of such tax should be withheld from the payment of interest on the stock. On suit brought by the stockholder or bondholder to recover the difference in interest, the Supreme Court of South Carolina held the withholding of the tax was valid. On writ of error the Supreme Court of the United States says:

"That involved in the judgment of the Court of Common Pleas and in that of the Supreme Court of the State was a decision that the city ordinances of Charleston were valid, that they did control the contract of the city with the plaintiff, and that they did not impair its obligation,. is too plain for argument. The plaintiff complains that the city has not fully performed its contracts according to their terms, that it has paid only four per cent interest instead of six per cent, which it promised to pay, and that it has retained two per cent of the interest for its own use. The city admits all this, but attempts to justify its retention of one-third of what it promised to pay by pleading its own ordinances directing its officer to withhold the two per cent of the interest promised whenever it became due and payable according to the stipulations of the contract, calling the amount detained a tax. Of course, the question is directly presented whether the ordinances are a justification; whether they can and do relieve the debtor from full compliance with the promise; in other words, whether the ordinances are valid and may lawfully be applied to the contract. The court gave judgment for the defendant, which would have been impossible had it not been held that they have the force of law, notwithstanding the Constitution of the United States, and the Supreme Court affirmed the judgment. Our jurisdiction,. therefore, is manifest."

We call the attention of the court particularly to the two cases last above cited. In the case of Carondelet Canal Company v. Louisiana the court points out that the canal company was in possession of the property and the board of control under the subsequent state statute assumed the initiative to take away from the canal company the rights that it claimed under its alleged contract. In the language of the court, "The board of control had something else to do besides to wait. It was an agency of invasion." So in our case the plaintiffs have their bonds and coupons according to the terms of which Maricopa County is obligated to pay them their interest until the maturity dates of the bonds but by the resolutions of the board of supervisors and the state loan commissioners adopted in pursance of the subsequent act of the legislature the defendants with aid from the state Supreme Court are proceeding to publish notice to deprive the plaintiffs of the right to their interest. Thus, in the language of the Supreme Court of the United States they have became "an agency of invasion." In others words, it is not a case merely of a decision of the courts of the state depriving the plaintiffs of rights they thought they had as was the situation in those cases where the courts of the state merely construed the contract against the holder thereof, but it is a case where without a subsequent legislative act the plaintiffs would continue to enjoy the full rights which they claim without question. The resolutions of the board of supervisors and state loan commissioners are the agency by which plaintiffs' contract is being impaired. In other

words, these resolutions are the state's weapons by which the rights plaintiffs claim are being stricken down and to say that it is not these resolutions but the decision of the Supreme Court of Arizona that impairs the obligation of plaintiffs' contracts is not true. The decisions of the Supreme Court of Arizona merely give permission to defendants to use their weapons, the resolutions, to attack plaintiffs' rights.

In the case of Murray v. Charleston, the last case above cited, the situation was almost identical to what it is in our case. There the bondholder had his stock or bond which gave him the right to collect the 6% interest. The city sought to justify the withholding of 2% thereof by ordinances which authorized it to tax the stock. So here the coupons give the plaintiffs the right to their 5½% and 6% interest and the defendants by means of the resolutions are proposing to call the bonds and stop the payment of any further interest. Here as in the Murray case the Supreme Court of the state gave judgment holding that the resolutions were valid, but if plaintiffs' contract did not permit the call the resolutions were invalid, and the question to be decided is what was plaintiffs' contract and was it impaired by the resolutions, which are questions on the merits and not of jurisdiction.

e. The jurisdiction of the United States District Court under Section 41 Title 28 U. S. Code Annotated is determined by the claim set up in the complaint if apparently substantiated and made in good faith.

The above cases are all cases of writs of error to the Supreme Court of the United States under Section 344, Title 28, U. S. Code Ann. In those cases the federal question to give jurisdiction to the Supreme Court of the United States involves two elements (1) has there been set up a sufficient claim that a contract is being impaired by a subsequent law, and (2) has the decision of the state Supreme Court been against the claim? In many of the cases the second element is an important consideration for if the decision of the state Supreme Court has gone off on some other point, there has been no decision against the claim, and the jurisdiction of the United States Supreme Court does not attach because one of the elements required by the jurisdictional statute is absent. When the suit is brought in the Federal Courts in the first instance the only jurisdictional requisite under Section 41, Title 28, U. S. Code Ann. is that a sufficient claim of impairment of contract be made. Consequently, in such cases it is held that all that is required to sustain the jurisdiction of the Federal Court in such cases of original jurisdiction is that the complaint sets up a claim apparently in good faith and not frivolous, that the plaintiff has or claims a contract with a state or municipality which such state or municipality has attempted to impair by subsequent legislation.

Pacific Electric Ry. Co. v. Los Angeles, 194 U. S. 112, 48 Law ed. 896, 24 Sup. Ct. Rep. 586,

Illinois Central RR. Co. v. Adams, 180 U. S.

28, 36, 45 Law ed. 410, 21 Sup. Ct. Rep. 251,

City Ry Co. v. Citizens RR. Co., 166 U. S. 557, 562, 41 Law ed. 1114, 17 Sup. Ct. Rep. 653,

Cuyahoga River Power Co. v. Akron, 240 U. S. 462, 60 Law ed. 743, 36 Sup. Ct. Rep. 402, Mosher v. Phoenix, 287 U. S. 29, 77 L. ed. 148, 53 Sup. Ct. Rep. 67,

South Covington Etc. Ry. Co. v. Newport, 259 U. S. 97, 66 L. ed. 843, 42 Sup. Ct. Rep. 418.

3. The epoch-making decision of the United States Supreme Court in the case of Erie R. Co. v. Tompkins has no application to cases in which the jurisdiction of the Federal Courts is based on a Federal question.

But it may be contended that the above cases were decided prior to the case of Erie R. Co. v. Tompkins, 82 L. ed. 1188, 1194, 304 U. S. 64, 58 Sup. Ct. Rep. 817, 114 A.L.R. 1487 and the rules therein stated no longer prevail in the Federal Courts. Such is not the case. The rules stated in the above cases are not affected by the decision in Erie R. Co. v. Tompkins for it is expressly stated in the opinion in that case that it does not apply to cases where the jurisdiction of the Federal Courts is based on a Federal question. The express language of the exception being,

> "except matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the state."

This exception, indeed, is taken from the Federal Ju-

diciary Act. Section 34 of that act which was originally the Act of September 24, 1789, reads as follows:

> "The laws of the several states except where the Constitution, treaties or statutes of the United States otherwise require or provide shall be regarded as rules of decisions in trials at common law in courts of the United States in cases where they apply."

28 U. S. Code Ann. 725

The following cases decided since the decision of Erie R. Co. v. Tompkins hold that that case has no application to cases in which the jurisdiction of the Federal Courts is based upon impairment of the obligation of a contract.

Municipal Investors' Association v. Birmingham, 86 L. ed. 1341, 1343, 316 U. S. 153, 62 Sup. Ct. Rep. 975,

Irving Trust Co. v. Day, 86 L. ed. 452, 457, 314 U. S. 556, 62 Sup. Ct. Rep. 398, 137 A. L. R. 1093,

Wood v. Lovette, 85 L. ed. 1404, 1407, 313 U. S. 362, 61 Sup. Ct. Rep. 983,

Higginbotham v. Baton Rouge, 83 L. ed. 968, 971, 306 U. S. 535, 59 Sup. Ct. Rep. 705,

American Toll Bridge Co. v. RR. Commission of Calif., 83 L. ed. 1414, 1419, 307 U. S. 486, 59 Sup. Ct. Rep. 948,

Note:

140 A.L.R. 731,

Cone v. Rorick, 112 Federal (2nd) 894, 897,

Washington University v. Gorman, 153 S. W. (2nd) 35, 38 (Mo.)

That Erie R. Co. v. Tompkins was never considered as having application to cases presenting questions of impairment of obligation of contract is shown by the fact that while the Erie case was under consideration there was argued a case in which impairment of a contract was charged. In the opinion filed shortly after the decision in the Erie case federal jurisdiction is recognized and the case disposed of on the merits without mention of the Erie case.

J. D. Adams Mfg. Co. v. Storen, 304 U. S. 307, 82 L. ed. 1365, 58 Sup. Ct. Rep. 913.

In addition to the above, the Supreme Court of the United States since Erie R. Co. v. Tompkins has frequently held that where other federal rights claimed under the Federal Constitution or federal laws are involved, the rule of Erie R. Co. v. Tompkins does not apply. Among such cases are the following:

Doench v. Federal Deposit Insurance Corp., 86 L. ed. 956, 961, 315 U. S. 447, 62 Sup. Ct. Rep. 676,

Clearfield Trust Co. v. U. S., 87 L. ed. 524 (adv.), 63 Sup. Ct. Rep. 573 (adv.),

Deitrich v. Graeney, 84 L. ed. 694, 309 U. S. 190, 60 Sup. Ct. Rep. 480,

Jackson County v. U. S., 84 L. ed. 313, 316, 308 U. S. 343, 60 Sup. Ct. Rep. 285,

U. S. v. Pink, 86 L. ed. 796, 818, 315 U. S. 203, 62 Sup. Ct. Rep. 552,

Prudence Realization Corp. v. Geist, 86 L. ed. 1293, 1298, 316 U. S. 89, 62 Sup. Ct. Rep. 978,

Bailey v. Central Vt. R. Co., 87 L. ed. 1030 (adv.) 63 Sup. Ct. Rep. 1062,

Sola Electric Co. v. Jefferson Electric Co., 317 U. S. 173, 87 L. ed. 150, 152 (adv.) 63 Sup. Ct. Rep. 172 (adv.),

Fisher v. Whiton, 317 U. S. 217, 87 L. ed 167 (adv.) 62 Sup. Ct. Rep. 175 (adv.),

Garrett v. Moore McCormack Co., 317 U. S. 239, 87 L. ed. 183, 185 (adv.) 63 Sup. Ct. Rep. 246 (adv.),

Wragg v. Federal Land Bank of New Orleans, 87 L. ed. 273, 275, (adv) 63 Sup. Ct. Rep. 273 (adv.),

U. S. v. Pelzer, 85 L. ed. 913, 312 U. S. 399, 61 Sup. Ct. Rep. 659,

Lyon v. Mutual Health Benefit & Accident Asso., 305 U. S. 484, 83 L. ed. 303, 308, 59 Sup. Ct. Rep. 297,

Helvering v. Leonard, 310 U. S. 80, 84 L. ed. 1087, 1092, 60 Sup. Ct. Rep. 780.

In the light of the above array of cases it certainly is clear that the case of Erie R. Co. v. Tompkins has no application to cases involving a question arising under the Federal Constitution or federal laws or treaties, or even under non-statutory federal rights or claims based on federal policy. It will be noted that the rule that the Federal Courts must determine federal questions according to their own independent judgment extends to construction of state laws and rules of practice. The rule of Swift v. Tyson, 16 Pet 1, 10 Law ed. 865, never did extend to the construction of local statutes and rules of practice, being limited to so-called questions of general law. The rule that Federal Courts would follow the state construction of local statutes and rules of practice was always subject to the exception that such local statutes or rules of practice could not be allowed to defeat or impair a federal right.

Davis v. Wechsler, 68 L. ed. 143, 145, 263 U. S. 22, 44 Sup. Ct. Rep. 13,

Ward v. Love County, 253 U. S. 17, 64 Law ed. 751, 40 Sup. Ct. Rep. 419,

Appleby v. New York, 70 L. ed. 992, 999, 271 U. S. 364, 46 Sup. Ct. Rep. 569,

and since Erie R. Co. v. Tompkins the rule remains the same.

Municipal Investors' Asso. v. Birginham, 86

L. ed. 1341, 1343, 316 U. S. 153, 62 Sup. Ct. Rep. 975,

Washington University v. Gorman, 153 S. W. (2nd) 35, 38.

The decisions of this court have consistently recognized the fact that the case of Erie R. Co. v. Tompkins does not apply where a federal question is involved.

Getz v. Nevada Irrigation District, 112 Fed. (2nd) 495, 497,

Alameda County v. U. S., 124 Fed. (2nd) 612, 616,

Toole County Irrigation District v. Moody, 125 Fed. (2nd) 498.

In the Getz case, supra, this court pointed out that the alleged contract was not impaired because it was modified in accordance with a provision therein contained.

In the Alameda County case, supra, this court says:

> "Under the rule of Erie R. Co. v. Tompkins, supra, state law is applicable to all cases except 'in matters governed by the Federal Constitution or by acts of Congress'. The exception has been enlarged to include also treaties."

In the Toole County Irrigation District case, supra, this court held that it was bound by the later decisions of the Supreme Court of Montana in determin-

ing the nature of the obligation created by the issuance of the bonds there involved. Jurisdiction was based on diversity of citizenship. The existence of a federal question was not alleged nor could it have been because no subsequent statutes, ordinances or resolutions were enacted. The conflicting decisions of the Supreme Court of Montana were all made after the issuance of the bonds involved so that case obviously fell within the rule of Erie R. Co. v. Tompkins as a diversity of citizenship case in which the federal courts are bound to apply the law of the state as it exists at the time. Obviously no mention of the fact that the rule of Erie R. Co. v. Tompkins did not apply to cases involving a federal question was called for in that case.

(The following proposition No. 4, and the discussion thereunder apply to Assignment No. 2.)

4. The federal courts should not determine the rights of a sovereign state in a controversy with another state or the citizens of another state by applying the law of either state.

A number of the cases above cited hold that the rule of Erie R. Co. v. Tompkins does not apply to cases involving federal contracts or policies. The reason back of these decisions must be that since the Constitution gives the federal courts jurdisdiction over cases to which the United States is a party, it is the duty of those courts to protect the rights of the United States according to the general law of the land rather than the decisions of the courts of a particular state. We think the same principle applies to sovereign states. Federal courts are given jurisdiction of suits

to which a state is a party. The fact that this jurisdiction is conferred seems to imply that the intention is to provide that states will be protected in their rights according to the general law of the land rather than be subject to the municipal law of some other state. This rule has long been recognized:

> Kansas v. Colorado, 185 U. S. 125, 146, 46 L. ed. 838, 22 Sup. Ct. Rep. 552,
>
> Missouri v. Illinois, 200 U. S. 496, 520, 521, 50 L. ed. 572, 26 Sup. Ct. Rep. 268,
>
> Kansas v. Colorado, 206 U. S. 46, 97, 51 L. ed. 956, 27 Sup. Ct. Rep. 655,
>
> South Dakota v. North Carolina 192 U. S. 286, 48 Law ed 448, 24 Sup. Ct. Rep. 269,
>
> North Dakota v. Minnesota, 263 U. S. 365, 68 L. ed. 342, 44 Sup. Ct. Rep. 138,
>
> Connecticut v. Massachusetts, 282 U. S. 660, 75 L. ed. 602, 51 Sup. Ct. Rep. 286,
>
> Washington v. Oregon, 297 U. S. 517, 80 L. ed. 837, 56 Sup. Ct. Rep. 540.

In the case of Washington v. Oregon, supra, the Supreme Court says:

> "In such circumstances an injunction would not issue if the contest were between private parties at odds about a boundary. Still less will it issue here in a contest between states, a contest to be dealt with in the large and ample way that alone

becomes the dignity of the litigants concerned." In a number of cases the Supreme Court of the United States has said: that contests between the states take the place of the treaty power between nations of which the states were deprived by the Constitution, and that in questions arising between the states disputes are to be settled "on the basis of equality of right"; that while municipal law relating to like questions between individuals is to be taken into account, it is not to be deemed to have controlling weight. The principles of right and equity are to be applied with regard to the equal level or plane on which all the states stand.

See:

Connecticut v. Massachusetts, 282 U. S. 660, 75 L. ed. 602, 607, 51 Sup. Ct. Rep. 286,

Kansas v. Colorado, 206 U. S. 46, 97, 51 L. ed. 956, 27 Sup. Ct. Rep. 655.

That the rule of the above cases is not affected by the decision of the Supreme Court in Erie R. Co., v. Tompkins, is evident from the case of,

Hinderlider v. LaPlatta R. & Cherry Creek D. Co., 304 U. S. 92, 82 L. ed. 1202, 58 Sup. Ct. Rep. 803,

in which the opinion was rendered by Justice Brandeis on the same day as the opinion in Erie R. Co., v. Tompkins. In the Hinderlider case, the court says:

"For whether the water of the interstate stream must be apportioned between the two states is a

> question of federal common law upon which neither the statutes nor the decisions of either state can be conclusive."

This language is readily reconciled with the statement in Erie R. Co. v. Tompkins, that,

> "There is no federal *general* common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or general, be they commercial law or a part of the law of torts.", (Italics ours).

by referring to the definition of common law given in Kansas v. Colorado, 206 U. S. 46, 51 L. ed. 956, 27 Sup. Ct. Rep. 655, cited in the Hinderlider case, in which the court says:

> "For after all the common law is but the accumulation of the expression of the various judicial tribunals in their efforts to ascertain what is right and just between individuals in respect to private disputes."

Bearing this definition in mind, it is apparent that what Justice Brandeis had in mind when he said in the Erie R. Co. case, "There is no federal general common law," and in the Hinderlider case, that the apportionment of the water of an interstate stream between two states is a question of "federal common law upon which neither the statutes nor the decisions of either state can be conclusive", was that federal common law extended only to those subjects upon which the federal courts were given the power to render independent

decisions. The basis of the decision in the Erie R. Co. case was that ordinarily, they were given no such power unless a federal question was involved, but the Hinderlider case and the cases theretofore decided in suits between states recognized that the Federal Courts were given the power to declare the law in suits between states upon the general basis of equality of right and thus had the power to create a federal common law applicable to those cases. That this federal common law in suits between states is not limited to questions of boundaries and interstate streams, but extends to all controversies between states, is apparent from the case of South Dakota v. North Carolina, 192 U. S. 286, 48 L. ed. 448, 24 Sup. Ct. Rep. 269, in which state of South Dakota obtained a money judgment without interest on North Carolina State Bonds, by application of the principles of federal common law governing rights among the states.

While the above are cases with states on both sides, the principle applies wherever the rights of a sovereign state are involved even though those rights are represented by a county or other subdivision of the state.

In a recent case involving an action by the United States to recover taxes paid to a county under protest upon behalf of Indian wards, the question arose as to whether interest was to be charged against the county. The court, after indicating that if the action were against a private litigant interest would be allowed, states the following:

"But the present case introduces an important

factor not present in former decisions. The litigation is not between the United States and a private litigant but between the United States and the political subdivision of a state. In effect, therefore, we have another aspect of our task in adjusting the interests of two governments within the same territory. Nothing that the state can do will be allowed to destroy the federal right which is to be vindicated; but defining the extent of that right with relation to the operation of state laws is relevant. The state will not be allowed to invade the immunities of Indians no matter how skillful its legal manipulations. * * * Nor are the federal courts restricted to the remedies available in state courts in enforcing such federal rights. * * * Nor may the right to recover taxes illegally collected from Indians be unduly circumscribed by state law * * * Again, state notions of laches and state statutes of limitations have no applicability to suits by the government whether on behalf of Indians or otherwise. This is so because the immunity of the sovereign from these defenses is historic. Unless expressly waived, it is implied in all federal enactments.

"But the recovery of interest in inter-governmental litigation has no such roots in history. Indeed, liability for interest is of relatively recent origin and the rationale of its recognition or denial is not always clear. That it is not a congenial rule in our law is indicated by its denial in United States v. North Carolina, 136 U. S. 211, 34 L. ed. 336, 10 S. Ct. 920, on grounds of 'public

convenience.' Since Congress has, in the legislation implementing the Indians' tax immunity, remained silent as to recovery of interest, we need not presume that it has impliedly fixed liability for interest in a suit like the present.

"Having left the matter at large for judicial determination within the framework of familiar remedies equitable in their nature * * *, Congress has left us free to take into account appropriate considerations of 'public convenience.' * * * Nothing seems to us more appropriate than due regard for local institutions and local interest. We are concerned with the interplay between the rights of Indians under federal guardianship and the local repercussion of those rights. Congress has not been heedless of the interests of the states in which Indian lands were situated, as reflected by their local laws. * * * With reference to other federal rights, the state law has been absorbed, as it were, as the governing federal rule not because state law was the source of the right but because recognition of state interests was not deemed inconsistent with federal policy. * * * In the absence of explicit legislative policy cutting across state interests, we draw upon a general principle that the beneficiaries of federal rights are not to have a privileged position over other aggrieved taxpayers in there relation with the states or their political subdivisions. To respect the law of interest prevailing in Kansas in no wise impinges upon the exemption which the Treaty of 1861 has commanded Kansas to respect and the federal courts to vindicate. * * * Such is this court's doctrine regarding the imposition of

interest in cases where this court has fashioned its own doctrine."

Jackson County v. United States, 84 L. ed. 313, 317, 308 U. S. 343, 60 Sup. Ct. Rep. 285.

In the above case the Supreme Court of the United States announced the rule that in a case involving the states or their political subdivisions the public interest requires that the courts should not be bound by the rules of local law. Indeed, in a case involving a sovereign state the federal courts cannot be bound to follow the rule of law existing in one of those states for the rule of law in the other state may be different. In this case the State of Washington having purchased negotiable bonds offered to the public generally by Maricopa County, a subdivision of the State of Arizona, cannot reasonably be held to accept whatever rule of law the State of Arizona may lay down in litigation among its own officials in which the State of Washington has had no opportunity to urge its rights. The State of Washington has the right under the Federal Constitution which gives it the right to have its case determined in the federal courts, to assert its sovereignty and require the federal courts to determine the contest between it and Maricopa County as a local subdivision of the State of Arizona, according to the independent judgment of the federal courts.

When the Constitution of the United States created the Federal Judiciary and provided that it should have jurisdiction over all suits in which a state is a party, it did not mean that that jurisdiction could be defeated by a decision of the Supreme Court of the state of which its opponent is a legal subdivision, with-

out the state even having the right to a hearing. Suppose the Attorney General of the State of Washington had brought a suit against the State Treasurer of Washington enjoining him from surrendering the bonds held by that state and the Supreme Court of Washington had issued the injunction. Would not that decision be entitled to equal respect in the federal courts with the Arizona mandamus suits? It is preposterous to assume that the Constitutional right of the State of Washington to resort to the federal courts is so futile that all the federal courts can say to it is, "you are bound by the decision of your opponent which was made without giving you a hearing and undoubtedly for the express purpose of precluding you from asserting your rights."

II

The Statutes of Arizona In Effect When Plaintiffs' Bonds Were Issued Are Not Capable of Being Construed So As to Make Plaintiffs' Bonds Callable Before Their Maturity Dates.

1. Construction of statutes under which bonds were issued:

Assuming that we have satisfied the court that it has jurisdiction to exercise its independent judgment in determining whether or not plaintiffs' bonds are callable, we turn now to the question of the proper construction of the statutes under which they were issued. Plainly the bonds and coupons attached thereto do not provide for call before maturity (T. 59, 63). Beyond question both issues of bonds and coupons are in ex-

act compliance with Chapter 2, Title 52, Revised Statues of 1913 (T. 7-11). After their form was determined they were ratified by acts of the legislature (T. 19, 28). The argument is advanced, however, by the defendants and it has been sustained by the Supreme Court of Arizona that Chapter 1, Title 52, modifies Chapter 2, Title 52, so as to authorize the call of bonds issued under the last-named chapter. Specifically, the argument is that the following language in Section 5252, Arizona Revised Statutes of 1913,

> "and for the purpose of paying, redeeming and refunding all or any part of the principal and interest of the existing and subsisting state legal indebtedness and also that which may at any time become due or is now or may be hereafter authorized by law, the said commissioners shall from time to time issue negotiable coupon bonds of this state when the same can be issued at a lower rate of interest than previously paid on state indebtedness and to the profit and benefit of the state,"

authorizes the call of outstanding state bonds that have been issued with definite maturity dates, before their maturity, and the following words in Section 5260 Arizona Revised Statutes 1913,

> "and said loan commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness upon the official demand of said authorities in the same manner as other state indebtedness and they shall issue bonds for any indebtedness now allowed or that may be hereafter allowed by law to said coun-

ty, municipality or school district upon official demand by said authorities,"

extends the authority of the state loan commissioners to the calling of county, municipal and school district bonds that have been issued with definite due dates before their maturity.

2. Origin of Chapter 1, Title 52, Revised Statutes of 1913.

Passing for the present the gap in the reasoning by which the last result is reached, we proceed to a consideration of said Chapter 1, Title 52. The origin of this statue is revealed by an examination of Arizona territorial and state legislation and is established by the Supreme Court of Arizona in the case of Maricopa County v. Osborn, 136 Pac. (2nd) 270, 272 (adv) in which that court shows that Paragraph 2987 Arizona Revised Statutes 1887 though long since repealed was continued in force by Section 5258, R. S. of 1913, which is a part of said Chapter 1, Title 52, by reason of the fact that it was adopted by reference by the Act of Congress of June 25, 1890, which later became said Chapter 1, Title 52.

a. Act of Congress of June 25, 1890, limited to existing bonds. (See Exhibit G, this Brief.)

The meaning of the Act of Congress of June 25, 1890 was definitely understood when the act was adopted. It did not extend to the refunding of bonded indebtedness incurred after its date and ended with floating indebtedness incurred to December 31, 1890. (Arizona Revised Statutes,

1901, pages 104-109. See Exhibit G, this Brief.) By the Act of August 3, 1894, it was extended as to territorial warrants only, issued prior to December 31, 1895. (Arizona Revised Statutes, 1901, pages 109-110. See Exhibit H, this brief.) And by the Act of June 25, 1896, was extended to both territorial and county, municipal and school district indebtedness incurred up to January 1, 1897. (Gage vs. McCord, 5 Ariz. 227, 51 Pac. 977. See Exhibit I, this brief.) It never extended to any indebtdness of any kind incurred after the last mentioned date. The foregoing appears from the language of the acts of Congress, from reports of the committees recommending adoption of said act, (see Exhibits A, B, C and D attached to this brief,) and from the acts of the territorial legislature (see Act 79 Session Laws of 1891 and Act 33 Session Laws of 1895) and the decisions of the Supreme Court of the Territory.

Gage v. McCord, 5 Ariz. 227; 51 Pac. 977, 978.
Schuerman v. Territory, 7 Ariz. 62; 60 Pac. 895.

9. Act of Congress June 25, 1890 did not authorize call of bonds before maturity.

It was definitely understood that the Act of Congress of June 25, 1890, did not authorize the refunding of any bonds before their due dates unless they were voluntarily surrendered by the holders thereof. This appears from the report of of the committee of Congress and the official

statement of Mr. Murphy, a former governor of Arizona, in his presentation to Congress, as an Arizona territorial delegate (see Exhibits "C" and "D" this brief). If there is otherwise any doubt as to the meaning of an act of Congress reference to the reports of the committee in charge of the legislation will be accepted as determining the question.

Binns v. U. S. 194, U. S. 486, 495, 48 L. ed. 1087, 24 Sup. Ct. Rep. 816.

Wright v. Vinton Branch 300 U. S. 440, 463, 81 L. ed. 736, 57 Sup. Ct. Rep. 556.

It is, therefore, clear that the Act of Congress of June 25, 1890, which afterwards became Chapter 1, Title 52, Revised Statutes of 1913, as it stood before Arizona became a state, did not authorize what the Supreme Court of Arizona has now held it did authorize in 1919 and 1921.

Maricopa County v. Osborn, 125 Pac. (2nd) 703.

Thus the decision of the Supreme Court of Arizona must be erroneous unless the meaning of said Act of Congress of June 25, 1890 was changed in some manner before it became Chapter 1, Title 52, Revised Statutes of 1913. Said Act of June 25, 1890, became a law of the State of Arizona by virtue of Section 2, Article 22 of the state constitution insofar as it was not inconsistent with said constitution and as such law of the state it was subject to all interpretations it had theretofore received.

Mallory v. Pioneer Southwestern Stages, 54 Fed. (2nd) 559, 562,

Stevirmac Oil & Gas Co. v. Smith, 259 Fed. 650, 654,

Patterson v. Rousney, 159 Pac. 636, 639.

The interpretations placed upon said act before statehood have the same effect as interpretations placed thereon after statehood.

Frick Co. v. Oats, 94 Pac. 682, 686.

Said Chapter 1, Title 52, was thereafter enacted without change so far as the questions here involved are concerned as Chapter 29 of the first special session of the first legislature of the State of Arizona. Such re-enactment continued the statute with the meaning that had theretofore been attributed to it by the courts.

Heald v. District Court, 254 U. S. 20, 22, 65 Law ed. 106, 41 Sup. Ct. Rep. 42,

Johnson v. Manhattan R. Co., 289 U. S. 479, 77 L. ed. 1331, 1346, 53 Sup. Ct. Rep. 721,

Moore v. Chilson, 26 Ariz. 244, 254, 224 Pac. 818.

The same rule applies in case of executive or legislative construction.

National Lead Co. v. U. S., 252 U. S. 140, 64 L. ed. 497, 499, 40 Sup. Ct. Rep. 237,

U. S. v. Hermanosy Compania, 209, U. S. 337, 339, 52 Law ed. 821, 28 Sup. Ct. Rep. 532.

Thereafter the statute was made a part of the compilation known as the Revised Statutes of 1913. Its inclusion in said compilation under the authority of Chapter 64, third special session of the first legislature of the State of Arizona (T. 156-166) did not change its meaning for Section 7 of said act expressly provides the code commissioner shall have no power to change or modify any law (T. 159), and the rule is well established that in the case of such a compiled code as distinguished from a revised code, the separate enactments retain the meanings and relative status they had before the compilation.

Waterman S. S. Co. v. Brill, 9 So. (2nd) 23, 27,

Southern Pac. Co. v. Gila County, 56 Ariz. 499, 503, 109 Pac. (2nd) 610,

Warner v. Goltra, 79 L. ed. 254, 259, 293 U. S. 155, 55 Sup. Ct. Rep. 46,

State v. Purcell, 228 Pac. 796 (Idaho),
Gembler v. Seward, 285 N. W. 542, 545 (Neb.),

Paulson v. Hurlburt, 183 Pac. 937, 939 (Or.)

The Supreme Court of Arizona has declared that the passage of the act along the course above mentioned did not have the effect of eliminating

the long-forgotten Paragraph 2987 Revised Statutes of 1887, notwithstanding its repeal.

> Maricopa County v. Osborn, 136 Pac. (2nd) 270, 272 (Adv.)

We think it is clear from the foregoing that Chapter 1, Title 52, Revised Statutes of 1913, cannot be construed so as to authorize the call of plaintiffs' bonds before their maturity dates and that the Supreme Court of Arizona erred in so construing it in the first mandamus suit, it not being advised of the origin of the statute in that case.

c. Repeal by re-enactment of Chapter 2, Title 52.

But the foregoing is not all. Chapter 2, Title 52, Revised Statutes of 1913, was re-enacted in its entirety as Chapter 20 of the acts of the third special session of the first legislature of the State of Arizona (T. 135-156). This undoubtedly was preparatory to its inclusion in the 1913 compilation. Chapter 1 of said Title 52 was not so re-enacted (T. 134-135). Thus, the two chapters went into the 1913 compilation with said Chapter 2 as the later enactment and undoubtedly repealing all provisions in said Chapter 1, the earlier enactment, which were inconsistent with said Chapter 2. Said Chapter 2 (see page 31 of this brief) provided for the issuance of bonds with definite maturity dates and both in the title and the body of the act provided for the redemption of said bonds *after* but not before maturity,

so any provision in said Chapter 1, providing for *redemption* before maturity, was unquestionably inconsistent with the provision in said Chapter 2, providing for *redemption* after maturity (see page 16 of this brief).

Furthermore, there has been in the statutes of Arizona since an early date, a statute which was dropped out in 1901, but re-enacted in 1907, and again re-enacted by the first legislature of the state at the third special session, (Sec. 5553, Title 58 Revised Statutes 1913) just prior to the adoption of Chapter 2, Title 52, a statute which declared that when a later statute covered a subject an earlier statute should not be deemed continued merely because it was consistent with the later statute but should be deemed abrogated and repealed. See Sec. 5553 Revised Statutes of 1913). Under this provision certainly Chapter 2, Title 52, covering the subject of redemption of bonds and providing that redemption might be made after maturity, certainly repealed that part of Chapter 1, Title 52, which according to defendants' contention provided for redemption at any time.

Olson v. State, 36 Ariz. 294, 301, 285 Pac. 282,

Murphy v. Utter, 186 U. S. 95, 105, 46 Law ed. 1070, 22 Sup. Ct. Rep. 776,

District of Columbia v. Hutton, 143 U. S. 18, 27, 36 L. ed. 60, 12 Sup. Ct. Rep. 369,

Grant v. Baltimore & Ohio R. Co., 66 S. E. 709 (W. Va.),

Harris v. Cooley, 152 Pac. 300 (Cal).

Chapter 64 of the Acts of the third special session of the first legislature providing for the compilation of all laws in force upon the adjournment of the third special session of the first legislature, expressly provided that the code commissioner should have no power to change the meaning of any of the laws (T. 157-166). It is difficult to discover anything that the first legislature of the State of Arizona might have done to make more clear its intention that the bonds to be issued under Chapter 2, Title 52, should not be impaired by anything contained in Chapter 1, Title 52.

3. Many other reasons exist why the refunding provided for by Chapter 1, Title 52, cannot be construed as authorizing the refunding of bonds issued under Chapter 2, Title 52. Among these are:

a. Chapter 1, Title 52, Revised Statutes of 1913, never did authorize the refunding of indebtedness to be created after the passage of the statute. The original Act of Congress of June 25, 1890, from which the language was derived, required the boards of supervisors to report their bonded and outstanding indebtedness, meaning existing indebtedness, and the subsequent words "and they shall issue bonds for any indebtedness * * * that may hereafter be allowed by law" meant indebtedness existing but not yet allowed when the act was passed. This is made clear by the proviso in Section 15 of the act to the effect

that, "existing and outstanding indebtedness, together with such warrants as may be issued for the necessary and current expenses of carrying on territorial, county, municipal and school government for the year ending December 31, 1890, may also be funded and bonds issued for the redemption thereof," (see pages 108-109 Revised Statutes 1901).

The effect of the proviso was to extend not to limit the language in the preceding section. The words, "allowed by law" had reference to allowance of claims by the boards of supervisors as found in the then existing statutes, providing for the government of counties.

Section 407 of the Revised Statutes of 1887 provided "no payment shall hereafter be made from the treasury of any of the counties of this territory unless the claim or demand shall be duly allowed according to the provisions of this act." The word, "allowed", is frequently used in the same sense in the succeeding sections which provide for the allowance of claims against the county.

A similar method for establishing school district indebtedness is provided for in Section 1495 Revised Statutes of 1887. The word "allowed" with reference to indebtedness retained the same meaning in the Revised Statutes of 1913, Sections 2433-2439 Revised Statutes of 1913. The code commissioner and legislature in preparing the 1928 Code unquestionably so understood the

meaning of the word "allowed" and changed the same to "allowed to be incurred" so as to provide for the refunding of indebtedness to be incurred in the future (Sec. 2654 Revised Code 1928).

b. The intent of Congress in the Act of June 25, 1890, was clearly to reduce the high rate of interest on county indebtedness by permitting the same to be refunded as territorial indebtedness. It so appears from the committee report (Exhibit "A"). The act provided that bonds should be issued by the loan commissioners as territorial bonds without limiting the obligation of the territory (see Pars. 2041, 2047, pages 104-106 Revised Statutes of 1901). The provision in Paragraph 2041 that the faith and credit of the territory is pledged to secure the bonds clearly applies to all the indebtedness, local as well as territorial, refunded under the act. Besides,. there was an express provision that if there was not sufficient money in the interest fund the interest should be paid out of the general fund of the territory (Par. 2050). True, the act contemplated, and the territorial act passed to supplement the same (Act 79, page 97 Session Laws 1891) provided, that the local subdivisions should reimburse the state, but the faith and credit of the state was back of the bonds. That such was the proper interpretation of the act is shown by Paragraph 6th of Article 20 of the State Constitution which provided that all debts of the counties, valid and subsisting at the time of the passage of the Enabling Act, were assumed by the state, but the same constitution made it impossible for the

state to assume any county indebtedness after statehood, for Section 5 of Article 9 of the state constitution absolutely prohibited the state from incurring any indebtedness except for certain limited purposes therein stated. The result was that if Section 5260 Revised Statutes of 1913 had authorized the refunding of county indebtedness by the state loan commissioners it would have been in violation of the state constitution. The code commissioner and legislature in 1928, realizing this changed the language of the act so as to provide that county bonds issued by the loan commissioners should not be secured by the faith and credit of the state and that the state should have no obligation thereon except to levy taxes in the counties and collect the same (Sec. 2654 Revised Code 1928).

c. Long continued construction of act should govern.

The long continued construction of the act from its adoption in 1890 down to 1942 is at variance with the construction contended for by defendants. Beginning with Section 15 of the Act of 1890 (Exhibit "F") and the extensions by the Acts of 1894 (Exhibit "G") and 1896 (Exhibit "H") the statements in the reports of the Congressional committees on those acts (Exhibits "A", "B", "C", "D") statement of Governor Murphy (Exhibit "D"), the fact that the territorial acts adopted in furtherance of the acts of Congress, show no indication of intent to call bonds not voluntarily surrendered (see page 27 this

brief), the numerous acts passed between 1896 and statehood, providing for the issuance of optional bonds (Exhibit "E"), which were all at variance with the interpretation contended for by defedants, and the fact that no attempt was made after statehood to refund unmatured bonds but other refunding acts were passed to provide for refunding only optional bonds (Chapt. 39 Session Laws 1927 and Chapters 74 and 75 Session Laws 1935), and the fact that Title 2, Chapter 52, and the chapter providing for the issuance of school district bonds where the indebtedness was less than 4% (Secs. 2736-2749 Revised Statutes of 1913), all provided for definite due dates, the former providing for redemption of the bonds only after maturity, and the later providing for a sinking fund to redeem on maturity, all show a construction of the act at variance with defendants' contention.

d. Subsequent legislative construction of act limits it to past due and optional bonds.

The fact that the legislature enacted Chapter 39 Session Laws of 1927 and Chapter 74 and Chapter 75 Session Laws of 1935, providing for the refunding of county, municipal and school district bonds and state bonds, respectively, only when they were callable, is clearly a subsequent legislative construction of the acts under which the bonds were issued to the effect that the provision in Chapter 1, Title 52, providing for refunding was not available to force the call of such bonds when they were not optional.

Moore v. Pleasant-Hassler Construction Co., 51 Ariz. 40, 48, 76 Pac. (2nd) 225,

Alexander v. Mayor, 5 Cranch 1, 7, 3 Law ed. 19

The case of Moore v. Pleasant-Hassler Construction Company, supra, is a definite decision by the Supreme Court of Arizona to the effect that where a subsequent act of the legislature shows what was the intent of the legislature in adopting a prior statute, such intent will be followed by the courts. It will be noted in this case the meaning of the prior act was not drawn in question until after the subsequent acts of the legislature were passed so that this case comes under the dissenting as well as the majority opinion in the Pleasant-Hassler case.

e. Chapter 1, Title 52 applies to matured and optional bonds *only.*

It is plain that the language of Section 5260, Revised Statutes of 1913, independently considered by this court, ought not to be construed as having the drastic effect of permitting the call of plaintiffs' bonds before maturity. Inasmuch as this language is a verbatim reenactment of the Act of Congress of June 25, 1890, and must have the same meaning as the original statute, to give it that construction requires us to assume that Congress deliberately enacted an unconstitutional statute. The Act of Congress of June 25, 1890 applied only to bonds which were outstanding on the date of its enactment. Such a construction, therefore, requires us to assume that Congress in-

tended to compel the holders of outstanding bonds, which were not redeemable prior to their maturity, to surrender their bonds for payment, which would make the act unconstitutional on the ground that it impaired the obligation of existing contracts. While Section 1 of Article X of the Federal Constitution does not apply to Congress, nevertheless such an act would be void as depriving the holders of the bonds of their property without due process of law.

> Choate v. Trapp, 224 U. S. 665, 56 Law ed. 941, 32 Sup. Ct. Rep. 565,
>
> Lynch v. United States, 292 U. S. 571, 78 L. ed. 1434, 54 Sup. Ct. Rep. 840.

Such an interpretation is unthinkable, and is manifestly contrary to the intent of Congress as is clearly shown by Exhibit D. If the Act of Congress of June 25, 1890 had no such intent, then, obviously, the same language had no such intent when it was reenacted verbatim by the first legislature of the State of Arizona.

Considered from the standpoint of the first legislature of the State of Arizona, defendants' construction requires us to assume that that legislature intended to make callable before the beginning of the option period, all of those bonds issued prior to statehood which had not yet reached the option period (See Exhibit E attached to this brief) and this clearly would render said act unconstitutional as impairing the obligation of the contract created by the issuance of those bonds. It is the rule in Arizona as well as elsewhere that where two constructions of an act are possible,

one of which will render the act unconstitutional, that construction which renders it valid, will be adopted.

McManus v. Industrial Commission, 53 Ariz. 22, 28, 85 Pac. (2nd) 54,

Automatic R. M. Co. v. Pima Co., 36 Ariz. 367, 373, 285 Pac. 1034,

Prescott Courier, Inc. v. Moore, 35 Ariz. 26, 34, 274 Pac. 163.

State of Arizona, v. Hooker, 45 Ariz. 202, 206, 41 Pac. (2nd) 1091,

Stewart v. Robinson, 45 Ariz. 143, 150, 40 Pac. (2nd) 979,

Oglesby v. Pacific Finance Corporation, 44 Ariz. 449, 453, 38 Pac. (2nd) 646.

Even if no constitutional question were involved the reasonable construction would be to limit the refunding under Chapter 1, Title 52, to cases where the bonds were optional or past due or voluntarily surrendered by the holder. This was the construction arrived at by the Supreme Court of Missouri in the only case that we have found squarely upon the point.

State v. Smith, 96 S. W. (2nd) 348, 351 (Mo.)

f. Provisions of Chapter 1 not to be read into Chapter 2.

Ordinarily when an act or a chapter contains a complete procedure for the issuance of bonds and another act or chapter contains provisions

for the issuance of different bonds, the provision of the latter act will not be applied to the former act for the presumption is that each of the acts were intended to be complete in themselves and the provisions of the one should not be read over into the other. Thus, in Arizona, there has existed side by side since 1913, the act providing for the issuance of bonds in excess of 4% which was applicable to school districts (Chapter 2, Title 52, Revised Statutes of 1913) and the act providing for the issuance of bonds by school districts for indebtedness less than 4% (Sections 2736-2749 Revised Statutes of 1913). It has never been contended that the provisions of one of these acts was applicable to bonds issued under the act, and the Supreme Court of Arizona has definitely held that such is not the case.

Armer vs. Wade, 48 Ariz. 1, 58 Pac. (2nd) 525
This principle is equally applicable to this case. The provisions of Chapter 1, Title 52, have no application to the provisions of Chapter 2, Title 52, because said Chapter 2 is complete in itself and there is nothing to indicate that the bonds therein provided for were to be added to or detracted from by statutes providing for other and different bonds. The principle is applied in other states as well as in the State of Arizona.

State v. Keith, 66 Pac. (2nd) 1059 (Okla.)

g. Section 5260, which is found in Chapter 1, Title 52, Revised Statutes of 1913, does not say that bonds of counties, municipalities and school districts shall be callable, nor does it say that they

shall be refundable when the refunding bonds can be issued at a lower rate of interest or to the profit and benefit of the county. It merely says that:

> "Said loan commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness upon the official demand of said authorities in the same manner as other state indebtedness and they shall issue bonds for any indebtedness now allowed or that may be hereafter allowed by law to said county, municipality or school district upon official demand by said authorities."

Refunding "in the same manner" covers only the procedure for refunding and does not purport to give to the counties, municipalities or school districts the substantive right to issue notice and call the outstanding bonds.

Wilders S. S. Co. v. Low, 112 Fed. 161, 164.

It is a little absurd to say that under this general provision a small issue of school district bonds in a remote part of the state may be called by publishing a notice in the county where the state capital is situated.

h. *Bond were ratified in form issued.*

After a contract for the 1919 issue of bonds had been entered into between the county and the purchasers, the legislature of the state adopted Chapter 54 Session Laws of 1921 (See Exhibit

J this brief) which ratified these bonds and the contract for the purchase thereof (T. 19). The contract for the purchase specifically provided for the delivery of bonds running for the period of years mentioned in the resolution for their issuance, which was of record. The form of the bonds had been adopted by the board of supervisors long prior to the passage of this act and the bonds had been printed (T. 19). We think it is clear that it must be presumed that the legislature in ratifying these bonds and this contract knew what the bonds and the contract contained and they also must be presumed to have known what the law was, so when they ratified these bonds they made them valid as they stood, and that if there had been any variation between the bonds as issued and the law that variation was eliminated, for it was the very intent and purpose of the act that these bonds should be made good as they stood.

Ryan v. Humphries, 150 Pac. 1106, 1108.

For the second issue of bonds there is a similar ratification by Act 86 of the 1921 Session Laws. (See Exhibit K this brief.) When this ratification act was passed these bonds had not been issued but the form had been adopted and had been made a matter of public record (T. 28-29). This act ratifies the bonds as they stand but there was at the time no contract of purchase. While the case is not as strong as in the case of the first issue, in that no purchase contract was ratifiied, we think here too that the legislature ratified the bonds as they stood.

i. *Bonds are Negotiable*

Another question is presented. These bonds and the coupons attached thereto are negotiable instruments. We know of no reason why Maricopa County may not be bound by a negotiable bond issued under the authority of the legislature of the state, and that these bonds were so-issued cannot be questioned, because the ratifying acts provided the authority if it had not previously existed. The bonds and coupons on their face provide for payment of interest until certain dates. The purchaser of these bonds and coupons was entitled to rely on their face. This point was presented to this court in the Getz case, where this court found that the coupons upon which the suit was brought were not negotiable by reason of the fact that they were not payable at all events.

> Getz v. Nevada Irr. District, 112 Fed. (2nd) 497.

The coupons on the bonds in this case are so payable. If the contract had been as claimed by defendants, they should have had the exception that was contained in the coupons in the Getz case, but here they did not have that exception and, therefore, in this case the plaintiffs are entitled to claim as holders in due course.

j. *County is estopped.*

There can be no doubt that the defendant, Maricopa County, is estopped to question the covenants in these bonds and coupons to pay inter-

est until their maturity dates. Ordinarily in cases of this kind there is no estoppel against such a contention as the defendants here make for the reason that such contention is based upon the law and if the law did not authorize the bonds in the form in which they were issued, they were issued without authority, and the county or municipal corporation cannot be estopped by the acts of its officers beyond their authority, but in this case the legislature which has the power to confer the authority, either before or after their issuance, has definitely established that the authority to issue these bonds existed by the ratification acts. The result is that Maricopa County is in a position of having legally issued bonds and coupons containing a definite agreement to pay the interest on these bonds exactly as is claimed by the plaintiffs. The bonds and coupons are negotiable and are issued to the public at large. The public has a right to rely on the face of the instrument for the reason that they need not go back of the ratification act. Ordinarily, of course, a purchaser of bonds must examine the proceedings of record and the law and will be charged with notice of what he would find by such examination but that is because the officials who issued the bonds have no authority to issue bonds at variance with such proceedings and the applicable law, and have no power to relieve the purchaser from the duty of making such investigation, but the legislature of the state clearly has the power to say that a purchaser of the bonds of a county or municipality may rely upon the face of the instruments without making an in-

vestigation of the proceedings or the law, and that is exactly what the legislature has done by the ratification acts in this case. A private individual having issued bonds and coupons such as this would find it absolutely impossible to escape payment of the interest in the manner contended here by the defendants. The question of the authority of the agents to make recitals which is the determining factor in most cases is absent here because these bonds are unconditionally authorized by the legislature. The estoppel is as complete as where it operates directly against the principal.

See:

Town of Coloma v. Eaves, 92 U. S. 484, 23 Law ed. 579,

Waite v. Santa Cruz, 184 U. S. 302, 321, 46 Law ed. 552, 22 Sup. Ct. Rep. 327,
Note 86 A.L.R. 1057.

4. *The Decisions of the State Supreme Court in the Two Mandamus Cases Are Not Persuasive.*

a. It is settled that the weight that will be given to the decisions of the Supreme Court of the state in such a case varies according to the circumstances of the particular case. There are many factors in this case detracting from the weight that should be given the decisions of the Supreme Court in the mandamus cases. One of these is the nature of the case. These mandamus suits are undoubtedly between parties whose interests all lay on the same side of the litigation,

as no bondholders were parties. Decisions made in such noncontroversial litigation should not be given great weight.

U. S. v. Johnson, 87, L ed. 1027 (adv.) 63 Sup. Ct. Rep. 1075 (adv),

Day v. Buckeye Irr. Co., 28 Ariz. 466, 476, 237 Pac. 636.

b. It is the duty of the federal courts to protect the rights of persons who claim under the Federal Constitution or laws. That is why the constitution of the United States created those courts and gave them jurisdiction. That is also the object of the federal statutes. To permit such federal rights to be disregarded by reason of decisions of the state courts in suits to which the persons claiming the federal rights are not parties, would undoubtedly deprive such persons of their property without due process of law.

Postal Telegraph Cable Co. v. Newport, 247 U. S. 464, 476, 62 L. ed. 1215, 38 Sup. Ct. Rep. 566,

Brinkerhoff Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 74 L ed. 1107, 1112, 50 Sup. Ct. Rep. 451.

c. Another reason why the decision of the Supreme Court of Arizona in the two mandamus suits is not entitled to great weight is that the opinions of said court show that of the various questions presented by this case only one was considered by the Supreme Court of Arizona and that one was decided without consideration of the his-

tory of the statutes on which a correct decision must find its basis. The decision of the Supreme Court of Arizona was based entirely on a superficial examination of the language of Chapter 1, Title 52, Revised Statutes of 1913, and from such superficial examination the conclusion was reached that said Chapter 1, Title 52, applied to and modified the bonds issued under said Chapter 2, Title 52. The decision of the State Supreme Court gave no consideration to the original meaning of said Chapter 1, nor to the legislative construction thereof, nor to the repeal by Chapter 2, Title 52. The attention of the court never was called to either of the ratification acts, nor to any of the subsequent refunding acts indicating the legislative policy of the state, entirely at variance with the decision reached by the court. Naturally, in giving weight to the decision of the Supreme Court of the state, only what the Supreme Court has considered and acted upon may be considered. The question of the negotiability of the bonds and the estoppel of the county were not considered, nor could these questions have been considered in these mandamus suits for there was no one present before the court to raise the questions of bona fide purchaser or of estoppel which must be affirmatively presented.

d. The Supreme Court of Arizona in the first mandamus suit, 125 Pac. (2nd) 703, fell into an obvious error. It holds that the provision for refunding state bonds applies to all bonds of the state and county, municipal and school district bonds as well, so as to authorize the calling of

those bonds, notwithstanding they have been legally issued with definite maturity dates. Then it proceeds to hold that the refunding bonds themselves when issued are not subject to so being called for the reason that in another section of the same act there are provisions for making those bonds callable only after the expiration of a certain period of years. In other words, it decides that this refunding provision does not prevail over definite due dates in the refunding bonds but does prevail over definite due dates in bonds issued under any other act. This is an impossible conclusion. The refunding provision is in general terms. It must prevail over all provisions in conflict whether in the same act or elsewhere, or it must yield to all such contrary provisions. The distinction made by the state Supreme Court cannot be accepted by the federal courts.

The Supreme Court of Arizona in the first mandamus suit, Maricopa County v. Osborn, 125 Pac. (2nd) 703, wholly overlooked the distinction between the provisions in Chapter 1, Title 52, Revised Statutes, 1913, and the provision in Article 4, Chapter 10, of the Arizona Annotated Statutes of 1939, relating to the faith and credit of the state. In the first act a provision is found that the refunding bonds shall be issued upon the faith and credit of the state. In the 1939 act a provision is found that they shall not be so-issued. The Supreme Court of Arizona evidently was under the impression that the provision of the latter act was contained in the former act.

Likewise, the opinion of the Supreme Court of Arizona in the first mandamus suit, Maricopa County v. Osborn, 125 Pac. (2nd) 703, considers Chapter 1, Title 52, Revised Statutes of 1913 as if it had no history back of it. It was undoubtedly so-considered because its history had not been called to the attention of the Supreme Court but in the second mandamus suit, 136 Pac. (2nd) 270 the Supreme Court of Arizona goes back to the origin of said Chapter 1, Title 52, in the Act of Congress of August 25, 1890. If the court had then considered the full effect of the history of said act it probably would have reached a different conclusion. As matters now stand the Supreme Court of the state has gone back to the origin of Chapter 1, Title 52, to uphold the defendants' procedure but has not gone back to the origin of the act to determine whether it authorized the refunding.

e. The vital statute to be construed in this case is in truth an act of Congress for it originated as such and its construction relates back to its origin.

III

The Mandamus Proceedings in the State Court in Which No Bondholders Were Parties Is Not An Adjudication of the Rights of the Bondholders So As to Bar Them From Proceeding to Have Their Rights Determined in the Federal Court.

Hale v. Bimco Trading Company, 306 U. S.

375, 83 L. ed. 771, 59 Sup. Ct. Rep. 526,

Postal Telegraph Cable Co. v. Newport, 247 U. S. 464, 476, 62 Law ed. 1215, 38 Sup. Ct. Rep. 566,

Christopher v. Brusselback, 302 U. S. 500, 82 L. ed. 388, 391, 58 Sup. Ct. Rep. 350,
City of Clinton v. First National Bank, 39 Federal Supp. 907, 918.

The fact that certain counsel were permitted to file briefs as amici curiae did not make the judgment binding on all of the bondholders as according to recognized practice filing a brief as amicus curiae does not have any such effect for such amicus curiae has no control over the case.

Litchfield v. Crane, 123 U. S. 549, 31 Law ed. 199, 8 Sup. Ct. Rep. 210,

Stryker v. Crane, 123 U. S. 527, 540, 31 Law ed. 194, 8 Sup. Ct. Rep. 203,

Gratiot State Bank v. Johnson, 249 U. S. 246, 249, 63 Law ed. 587, 39 Sup. Ct. Rep. 263,
3 Cor. Jur. Sec. pages 1046-1052,

2 Amer. Jur. pages 679-682,

Dodd v. Reese, 24 N. E. (2nd) 995,

While there is a class of cases in which a number of a numerous class before the court may be held to represent the whole class so that the judgment will

bind all the members of the class, the rule is limited to such circumstances as assure a full presentation of the interests of all who are bound. Holding a person bound by a judgment entered in a case in which he has had no opportunity to be heard, deprives him of his property without due process of law.

> Hansberry v. Lee, 85 L. ed. 22, 311 U. S. 32, 61 Supt. Ct. Rep. 115, 132 A.L.R. 741.

In this case there is no showing that the Amici curiae represented any bondholders except the statement in one brief that one was represented. Such an informal statement could certainly not bind all bondholders as a class nor any except that one. We think it could not bind that one as he had no control over the case.

The facts disclosed in this case make out a case of what would be considered sharp practice if the case were between individuals. We do not think that the fact that one of the parties is a subdivision of a state ought to permit the application of a lower standard.

> Palmcroft Development Co. v. Phoenix, 46 Ariz. 200, 212, 49 Pac. (2nd) 626.

The public interests weigh heavily on the plaintiffs' side. Maricopa is a large and prosperous county. Its negotiable bonds have been widely distributed on the open market. Permanent school funds, insurance reserve funds, charitable trusts, trusts for minors and the incompetent, workmen's compensation funds, labor union reserves, as well as numerous small investors are

among the holders of these bonds. The two plaintiffs in this case represent investments made for the permanent funds of a state and the reserve fund of a life insurance company. Many others equally deserving are interested although not represented in this case. The defendant, Maricopa County, is not struggling to prevent insolvency. It desires to have these bonds refunded by the state loan commissioners merely to save some money, which it is able to pay.

It insists that its rights must be determined by the courts of its own state. We think it is entitled to the decision of an impartial rather than a favorably disposed tribunal.

The minority of the Supreme Court of the United States in Wood v. Lovette, 85 L. ed. 1404, 1408, 313 U. S. 362, 61 Supreme Court Reporter 983 thought that social considerations should enter into cases of this kind to the extent of permitting the legislature to throw its weight in favor of noncommercial litigants. The majority did not agree. In this case it makes no difference whether we accept the majority or minority view. The plantiffs are entitled to prevail on a strictly impartial basis. The legislature has declared in favor of limiting refunding to callable bonds Chap. 39 Session L. 1927, Chaps. 74, 75 Session L. 1935) and the money involved in the controversy will certainly tend for as much social betterment if it is collected by the plaintiffs as if it is retained by the defendants.

We respectfully submit that the case must be considered by the Federal Courts on its merits and upon

such consideration judgment must be entered in favor of plaintiffs.

Respectfull submitted,

SMITH TROY, Attorney General of the State of Washington,

By .....
John Spiller, Assistant Attorney General Olympia, Washington.

WOOD, HOFFMAN, KING AND DAWSON, 48 Wall Street, New York, New York.

By .....
David M. Wood.

GUST, ROSENFELD, DIVELBESS, ROBINETTE & COOLIDGE, 201 Professional Bldg., Phoenix, Arizona.

By .....
J. L. Gust.

APPENDIX

Exhibit A

Congressional Record, Vol. 21, Part 3, page 2275, House of Representatives:

"The Committee on Territories, to whom was referred the bill (H. R. 3365) approving with amendments the funding act of the Territory of Arizona, having considered the same, report as follows:

The assessed valuation of the Territory of Arizona is, in round numbers, $30,000,000, and the indebtedness of the Territory, counties, cities, and school districts, about $3,000,000, or 10 per cent of the assessed valuation.

The rate of interest on the present indebtedness is not less than 6 per cent, and much of it is 10 per cent per annum, the average being about 8 per cent.

This high rate of interest has been paid regularly, and all the bonds, Territorial, county, city and school, are held at or above par, and they were all issued for indebtedness created prior to the Harrison act. At the time said act went into effect the Territorial and county treasuries were without funds, and continued without funds until the next taxes were paid. In order to carry on government it became a necessity to create debt, and this debt was placed in the form of warrants bearing 10 per cent interest. Notwithstanding the high rate of interest these warrants have never had a good commercial standing, on account of their dubious legal status. It is therefore a fact that the running expenses of the Territory, including counties,

cities, and school districts, are largely increased by the depreciated value of warrants and the high rate of interest they bear. The Territory and many of the counties have each year fallen a little behind the preceding year in meeting their expenses, and it is therefore an absolute necessity to afford them relief.

The committee believe that a Territorial bond, with the long time proposed and having the approval of Congress, can be sold at par, bearing a less rate of interest than can be sold in any other way, and thereby secure for the Territory the much-needed relief and the saving of $100,000 annually.

The provisions of the bill for carrying the same into effect have been carefully considered by the committee and are found to be ample, and that, except to legalize the indebtedness, there is no responsibility attached to the United States.

The time within which indebtedness may be funded is placed at December 31, 1890, when the taxes are due and payable. From and after that date there will be cash on hand with which to meet the current expenses of the Territory.

The committee are unanimously of opinion that the Territory of Arizona is entitled to relief, and therefore report back the accompanying bill with amendment, and recommend that it do pass."

III

Exhibit B

CONGRESSIONAL RECORD—HOUSE

(July 20, 1894, page 7754)

FUNDING ACT OF ARIZONA

MR. CULBERSON. Mr. Speaker, I call up the bill (H. R. 6754) to amend section 15 of an act approving, with amendments, the funding act of Arizona, approved June 25, 1890.

The bill was read, as follows:

BE IT ENACTED, etc. That an act entitled "An act approving, with amendments, the funding act of Arizona," approved June 25, 1890, and paragraph 2052 (section 15) of said act, be, and the same is hereby amended by adding thereto as follows:

"Provided further, however, That the present outstanding warrants, certificates, and other evidences of indebtedness issued subsequent to December 31, 1890, for the necessary and current expenses of carrying on the Territorial government only, together with such warrants as may be issued for such purpose for the years ending December 31, 1894, and December 31, 1895, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates, or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the Harrison Act."

Sec. 2. That all acts or parts of acts in conflict with this act are hereby repealed.

MR. CULBERSON. I yield to the gentleman from Arizona.

MR. SMITH of Arizona. Mr. Speaker, this is simply a bill carrying to a further extent the funding act of Arizona, so as to prevent the payment of 10 per cent on outstanding warrants for the current expenses of the Territory. It is desired to fund them under the funding act until the collection of the taxes, so as to be able to start on a cash basis. This is purely a local matter extending our funding act, and the bill is unanimously reported from the Committee on the Judiciary.

MR. HUNTER. I see that it provides for extending the time up to 1895.

MR. SMITH of Arizona. Yes. That is, until the collection of taxes.

MR. HUNTER. But if the Territory should become a State in the meantime would not that have some effect on the provisions of this bill?

MR. SMITH of Arizona. It would not have any effect, for the debt would be bonded as it arose, and the limitation placed by the Territorial Legislature, which does not meet until February, 1895. The Legislature can provide then for everything that happens thereafter, and this is intended only to fix the time up to the meeting of the Territorial Legislature.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

On motion of Mr. CULBERSON, a motion to reconsider the vote by which the bill was passed was laid on the table.

Exhibit C

CONGRESSIONAL RECORD—SENATE

(May 23, 1896, pages 5625 and 5626)

MR. PERKINS. I ask unanimous consent to call up the bill (S. 3161) amending and extending the provisions of an act of Congress entitled "An act approving with amendments the funding act of Arizona," approved June 25, 1890, and the act amendatory thereof and supplemental thereto, approved August 3, 1894.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

MR. COCKRELL. When was that bill reported?

MR. WHITE. A very short time ago, I think.

MR. PERKINS. It was reported from the Committee on Territories yesterday.

MR. COCKRELL. The report has not been laid on my table.

MR. PERKINS. The report is printed, and the Secretary will read it for the Senator's information.

MR. COCKRELL. I can understand much better when I have the report myself. Does the report explain the bill?

MR. PERKINS: I so understand. I will say that I introduced the measure more especially at the request of the Delegate from Arizona, and it is to correct some informality. The committee examined it very carefully, and from those who have stated the matter to me I learn it is a very proper measure.

MR. COCKRELL. Let the report be read.

THE VICE-PRESIDENT. The report will be read.

The Secretary read the following report, submitted by Mr. Davis May 22, 1896:

The Committee on Territories, to whom was referred Senate Bill 3161, having considered the same, hereby adopt House Report No. 1931 in support to a bill identical in tenor, and recommend the passage of Senate Bill aforesaid.

(House Report No. 1931, Fifty-fourth Congress, first session.)

The Committee on the Territories, to whom was referred House bill 8885, beg leave to submit the following report:

The act of Congress entitled "An act approving, with amendments, the funding act of Arizona" became a law June 25, 1890, and authorized the fund-

ing of all Territorial, county, municipal, and school-district indebtedness of Arizona which had accrued and would accrue, with the interest thereon, until and including December 31, 1890, into 5 per cent bonds, and under the provisions of the act a loan commission, consisting of the governor, secretary of the Territory, and Territorial auditor, was created to fund indebtedness under the terms of the act.

The purpose of the law was to effect an annual saving in interest and place the Territory upon a cash basis. The floating indebtedness of the territory represented by warrants bore 10 per cent interest, and upon that indebtedness an immediate saving was had of 5 per cent. The average rate of interest on the bonded indebtedness of the Territory was 8 per cent, and the operation of the law effected a saving of 3 per cent upon all indebtedness funded. Only such bonded indebtedness could be funded as had matured or was voluntarily surrendered by the holders thereof.

A supplemental act of Congress was passed and approved August 3, 1894, extending the time for funding outstanding warrants for Territorial expenses only until December 31, 1895. The object of the present bill is to further extend the provisions of the funding act approved June 25, 1890, until January 1, 1897, so as to permit and authorize the funding of such outstanding indebtedness as might have been funded under the original act had the same been surrendered before the act had lapsed.

It is not proposed to fund any indebtedness which

could not have been funded under the original act had said indebtedness been presented in time.

No new indebtedness is proposed to be funded in excess of the limit prescribed by law. In authorizing the funding of the outstanding liabilities the act also validifies the indebtedness already funded and authorized to be funded, so as to prevent the possibility of repudiation of bona fide obligations.

The eighteenth legislature of Arizona unanimously memorialized Congress to validate securities about which doubt existed.

Upon investigation the committee believe the legislation beneficial and wise and in the interest of good government, and therefore recommend the passage of the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

Exhibit D

CONGRESSIONAL RECORD—HOUSE

(June 1, 1896, page 5968)

ARIZONA FUNDING ACT

MR. MURPHY of Arizona. Mr. Speaker, I move to suspend the rules and pass the Senate bill which I send to the desk.

The bill was read, as follows:

BE IT ENACTED, etc., That the provisions of

the acts of Congress approved June 25, 1890, and August 3, 1894, authorizing the funding of certain indebtedness of the Territory of Arizona, are hereby amended and extended so as to authorize the funding of all outstanding obligations of said Territory, and the counties, municipalities, and school districts thereof, as provided in the act of Congress approved June 25, 1890, until January 1, 1897, and all outstanding bonds, warrants, and other evidences of indebtedness of the Territory of Arizona, and the counties, municipalities, and school districts thereof, heretofore authorized by legislative enactments of said Territory bearing a higher rate of interest than is authorized by the aforesaid funding act approved June 25, 1890, and which said bonds, warrants, and other evidences of indebtedness have been sold or exchanged in good faith in compliance with the terms of the acts of the legislature by which they were authorized, shall be funded, with the interest thereon which has accrued and may accrue until funded into the lower interest-bearing bonds as provided by this act.

Sec. 2. That all bonds and other evidences of indebtedness heretofore funded by the loan commission of Arizona under the provisions of the act of Congress approved June 25, 1890, and the act amendatory thereof and supplemental thereto approved August 3, 1894, are hereby declared to be valid and legal for the purposes for which they were issued and funded, and all bonds and other evidences of indebtedneses heretofore issued under the authority of the legislature of said Territory, as hereinbefore authorized to be funded, are hereby confirmed, approved, and validated, and may be funded as in this act pro-

vided until January 1, 1897; Provided, That nothing in this act shall be so construed as to make the Government of the United States liable or responsible for the payment of any of said bonds, warrants, or other evidences of indebtedness by this act approved, confirmed, and made valid, and authorized to be funded.

The SPEAKER pro tempore. Is a second demanded?

MR. HEPBURN. I demand a second.

MR. MURPHY of Arizona. I ask unanimous consent that a second be considered as ordered.

MR. KEM. I object.

Tellers being ordered upon the question of ordering a second, the House divided; and the tellers reported—ayes 80, noes 1.

So a second was ordered.

MR. MURPHY of Arizona. Now, Mr. Speaker, I ask that the report upon this bill be read. It is a unanimous report and explains the object of the bill clearly.

The report (by Mr. Harris) was read, as follows:

The Committee on the Territories, to whom was referred House bill 8885, beg leave to submit the following report:

The act of Congress entitled "An act approving,

with amendments, the funding act of Arizona" became a law June 25, 1890, and authorized the funding of all Territorial, county, municipal, and school district indebtedness of Arizona which had accrued and would accrue, with the interest thereon, until and including December 31, 1890, into 5 per cent bonds, and under the provisions of the act a loan commission, consisting of the governor, secretary of the Territory, and Territorial auditor, was created to fund indebtedneess under the terms of the act.

The purpose of the law was to effect an annual saving in interest and place the Territory upon a cash basis. The floating indebtedness of the Territory represented by warrants bore 10 per cent interest, and upon that indebtedness an immediate saving was had of 5 per cent. The average rate of interest on the bonded indebtedness of the Territory was 8 per cent, and the operation of the law effected a saving of 3 per cent upon all indebtedness funded. Only such bonded indebtedness could be funded as had matured or was voluntarily surrendered by the holders thereof.

A supplemental act of Congress was passed and approved August 3, 1894, extending the time for funding outstanding warrants for Territorial expenses only until December 31, 1895. The object of the present bill is to further extend the provisions of the funding act approved June 25, 1890, until January 1, 1897, so as to permit and authorize the funding of such outstanding indebtedness as might have been funded under the original act had the same been surrendered before the act had lapsed.

It is not proposed to fund any indebtedness which

could not have been funded under the original act had said indebtedness been presented in time.

No new indebtedness is proposed to be funded in excess of the limit prescribed by law. In authorizing the funding of the outstanding liabilities the act also validifies the indebtedness already funded and authorized to be funded, so as to provent the possibility of repudiation of bona fide obligations.

The eighteenth legislature of Arizona unanimously memorialized Congress to validate securities about which doubt existed.

Upon investigation the committee believes the legislation beneficial and wise and in the interest of good government, and therefore recommend the passage of the bill.

MR. MURPHY of Arizona. I reserve the balance of my time, unless some gentleman desires to ask questions.

MR. HOPKINS. Mr. Speaker, I think it is quite important that the gentleman should explain the provisions of this bill somewhat.

MR. MURPHY of Arizona. I supposed that the report explained it sufficiently, but if the gentleman thinks it does not I will gladly supplement it with a brief explanation. Under the working of the act of Congress approved June 25, 1890, the Territory of Arizona was authorized to fund all its indebtedness of whatever nature into 5 per cent bonds, thereby effecting an average saving of 3 per cent upon its

indebtedness. That law applied to all kinds of indebtedness—school district, Territorial, county, and municipal.

A commission was organized under the act, consisting of the governor, the secretary, and the Territorial auditor, for the purpose of executing the law, but of course the outstanding indebtedness bearing a higher rate of interest could not be compelled to be surrendered or funded unless it had matured, and therefore there still remained a considerable portion which could not be funded. Many obligations were about to mature, and they were funded. A portion of the 8 per cent indebtedness was funded, but some of the higher interest-bearing bonds of counties and municipalities were refused to be surrendered for funding. The expectation was to put the Territory upon a cash basis, but that expectation was disappointed, and the members of the Territorial government came here and asked the last Congress to extend the funding act for a year longer, covering the floating indebtedness and the Territorial expenses only, but not including the outstanding indebtedness of municipalities bearing a higher rate of interest. That act was passed August 3, 1894.

A question was raised here this morning about a cloud being on Territorial bonds, and a bill was passed validating certain bonds of New Mexico. A large amount of the bonds of Arizona might possibly give rise to the same questions if our people desired to repudiate their obligations, but there is no such desire on their part, and the Territorial legislatures, recognizing the danger to the credit of the Territory

if anyone should undertake to litigate these securities, have unanimously memorialized Congress to pass this act to validate both the bonds which have been funded and others outstanding, bearing a higher rate of interest, upon their voluntary surrender by their holders. There is about $200,000 involved altogether. I will ask the Clerk to read the memorial of the legislature, if the gentleman desires.

MR. HOPKINS. That is not necessary.

MR. JOHNSON of North Dakota. I wish to ask the gentleman whether there is anything in the act of 1890 safeguarding these bonds against being sold for less than par?

MR. MURPHY of Arizona. Yes, sir; they can not be so sold.

MR. JOHNSON of North Dakota. I do not see any provision of that kind in the bill.

MR. MURPHY of Arizona. Well, this bill refers to the provisions of the other act, which prohibits the selling of the bonds for less than par.

MR. JOHNSON of North Dakota. What arrangement is there for securing a premium on the bonds, provided the market should warrant it?

MR. MURPHY of Arizona. The Territorial officers constituting the loan commission are required, under the provisions of the act, to advertise for bids.

MR. JOHNSON of North Dakota. What experi-

ence have you had on that subject since the act of 1890?

MR. MURPHY of Arizona. Bonds to the amount of $500,000 were sold at a premium, bringing 102.

MR. JOHNSON of North Dakota. The bonds, as I understand, which were sold under the act of 1894 were gold bonds; that is, the interest was payable in gold.

MR. MURPHY of Arizona. Yes, sir; and the principal in lawful money.

MR. JOHNSON of North Dakota. And the same requirement applies with regard to these bonds?

MR. MURPHY of Arizona. Yes, sir.

MR. McCORMICK. Will this issue of bonds cover the entire indebtedness of the Territory?

MR. MURPHY of Arizona. Yes, sir; the entire indebtedness of the Territory may be funded under this act.

MR. JOHNSON of North Dakota. Will this bill, if it becomes a law, have the effect of validating any bonds which are now questionable?

MR. MURPHY of Arizona. Yes, sir; to a certain degree. None of the bonds have been repudiated by the Territory, but there is a cloud to a certain extent resting upon some of them.

MR. HEPBURN. This indebtedness, or the

larger part of it, was incurred, I believe, while a statute of the United States forbidding the Territory from issuing bonds was in force?

MR. MURPHY of Arizona. Oh, no; only a very small portion of it—about $200,000.

MR. HEPBURN. What is the total amount that has been funded or may be funded under this act—the total amount of the indebtedness of the Territory?

MR. MURPHY of Arizona. Probably less than $2,000,000. I funded $1,600,000 while I was governor. The aggregate I have named covers not simply debts of the Territory proper, but indebtedness of cities, counties, townships, and school districts. No one would call the debt of New York City the debt of New York. The amount of indebtedneses I have named includes every kind of obligation of the Territory proper and the indebtedness of municipalities, school districts, etc.; and the funding of this debt will save us on the average 3 per cent interest.

MR. HEPBURN. What portion of the $2,000,000 of indebtedness has been or will be incurred in the refunding of bonds of the prohibited class of which we have been speaking?

MR. HILBORN. The Pima claims?

MR. MURPHY of Arizona. None of the Pima claims; but of obligations similar to those, about $200,000.

MR. HEPBURN. I am willing to yield the floor to any gentleman who wants to speak on this subject. (Cries of "Vote!" "Vote!")

The question was taken; and the motion to suspend the rules and pass the bill was agreed to, two-thirds voting in favor thereof.

Exhibit E

Act 9, page 38, Session Laws of 1897, approved March 8, 1897, authorized the issuance of $100,000,.00 of territorial bonds for the erection of the capitol building, such bonds to be payable absolutely in fifty years from their date, the territory to have the right to pay them at any time after twenty years from their date.

Act 47, approved March 19, 1903, page 75, Session Laws of 1903, authorized the issuance of bonds to provide for improvements and publications of the Agricultural Experiment Station of the University and establishing farmers' institutes and short courses. The bonds were made payable within twenty years from the date of their issuance. This act provided for a sinking fund, and further provided that whenever, "after the expiration of ten years from the issuance of any bonds under this act there remains, after the payment of the interest as provided in this section, a surplus of $1,000.00 or more, it shall be the duty of the territorial treasurer to advertise" for the retirement of the bonds. Clearly, these bonds were authorized to be optional for the period between ten and twenty years after their date of issuance.

Act 73, approved March 19, 1903, page 127 Session Laws of 1903, authorized the issuance of $100,000.00 of bonds for the purpose of making improvements to the territorial asylum. These bonds were required to be payable fifty years after date. A sinking fund was provided for and Section 8 of said act contained the following provisions:

"Whenever, after the expiration of twenty-five years from the date of issuance of any bond under this act there shall be in the sinking fund for the redemption of the bonds for the territorial asylum for the insane, the sum of $2,500.00 or more, it shall be the duty of the territorial treasurer to advertise," for the retirement of said bonds. Clearly, these bonds were optional during the period between twenty-five years and fifty years after their date of issuance.

In 1905, the legislature authorized Apache County to raise money for the purpose of building a court house, in the amount of $15,000.00, payable thirty years from the date of issuance, providing a sinking fund beginning with the year 1925, which should be sufficient each year after that date to pay $1500.00 upon the principal of said bonds. Chapter 6, page 5, Session Laws of 1905.

Likewise, in the year 1905, the legislature passed an act authorizing Gila County to issue $40,000.00 of bonds for court house and jail, payable in thirty years, with an option on the part of the county to pay any or all of them after ten years after the date of their issuance. Chapter 9, page 12, Session Laws of 1905.

Likewise, in 1905, the legislature passed an act authorizing Mohave County to issue $20,000.00 bonds for the purpose of building a court house, said bonds to be payable thirty years from the date of their issuance, and providing for a sinking fund beginning in the year 1925, and that each year thereafter a tax of $2000.00 per year should be levied to retire said bonds. Chapter 57, page 112, Session Laws of 1905.

Likewise, in 1905, the legislature passed an act providing for the issuance of $19,000.00 of bonds for the repair of the territorial bridge across the Gila, at Florence, said bonds to be payable at the end of fifty years and to be optional twenty-five years after their issuance. Chapter 58, page 117, Session Laws of 1905.

Likewise, in 1905, the legislature passed an act for the issuance of $40,000.00 bonds for additional buildings and equipment at the territorial prison, said bonds to be payable fifty years after date and to be redeemable after twenty-five years from the date of issuance. Chapter 60, page 124, Session Laws of 1905.

Likewise, in 1905, the legislature passed an act authorizing the county of Mohave to issue bonds for $10,000.00 for the construction and furnishing of a jail, said bonds to be payable in twenty years, with an option on the part of the county to pay any or all of them after ten years from the date of issuance.

Act 61, page 129, Session Laws of 1905.

In 1907, the legislature passed an act authoriz-

ing Gila County to issue $25,000.00 bonds for the completion of the court house and jail, said bonds to be payable in twenty years, with option on the part of the county to pay any or all of them after eight years from the date of their issuance.

Chapter 17, page 16, Session Laws, 1907.

In 1909, the legislature passed an act authorizing Mohave County to issue bonds for building a court house in the amount of $30,000.00, payable thirty years after date, and providing for a sinking fund, and that in the year 1929 and each year thereafter until the year 1939, the county should levy and collect a tax sufficient to pay $3,000.00 upon the principal of said bonds, and when the sum of $5,000.00 should be in the redemption fund the same should be used for the redemption of said bonds. Chapter 17, page 34, Sessions Laws of 1909.

Exhibit F

Title 52

Chapter I

Funding and Refunding

5251. For the purpose of liquidating and providing for the payment of the outstanding and existing indebtedness of the State of Arizona, or of the Territory of Arizona assumed by the State of Arizona, and such future indebtedness as may be or is now authorized by law, the governor of the said state, together with the state auditor and state treasurer,

and their successors in office shall constitute a board of commissioners, to be styled the Loan Commissioners of the State of Arizona, and shall have and exercise the powers and perform the duties hereinafter provided.

Marginal Notations: Loan Commissioners, Ch. 29, Sec. 1, Laws 1912, 1st Sp. Sess.

5252. It shall be and is hereby declared the duty of the said loan comissioners to provide for the payment of the existing state indebtedness due, and to become due, or that is now or may hereafter be authorized by law; and for the purpose of paying, redeeming, and refunding all or any part of the principal and interest of the existing and subsisting state legal indebtedness, and also that which may at any time become due, or is now or may be hereafter authorized by law, the said commissioners shall, from time to time, issue negotiable coupon bonds of this state when the same can be issued at a lower rate of interest than previously paid on state indebtedness and to the profit and benefit of the state.
sioner. Sec. 2, id.

5253. Said bonds shall be issued as nearly as practicable in denominations of one thousand dollars, but bonds of a lower denomination, of not less than one hundred dollars may be issued when necessary. Said bonds shall bear interest at a rate to be fixed by said loan commissioners but in no case to exceed five per centum per annum, which interest shall be paid in gold coin or its equivalent in lawful money of the United States, on the 15th day of January and

July in each year, at the office of the state treasurer or some bank or trust company in the City of New York at the option of the purchaser of said bonds, the place of payment being mentioned in said bonds. The principal of said bonds shall be made payable in lawful money of the United States within twenty-five years after date of their issue. The state reserves the right to redeem at par any of said bonds in their numerical order at any time after fifteen years after the date thereof. They shall bear the date of their issue, state when, where, and to whom payable; rate of interest, and when and where such interest is payable; shall be signed by said loan commissioners; shall have the seal of the state affixed thereto; shall be countersigned by the state treasurer and bear his official seal, and shall be registered by the state auditor in a book to be kept by him for that purpose, which record shall show amount sold for, or if exchanged, for what exchanged; and the faith and credit of the state is hereby pledged for the payment of said bonds and the interest accruing thereon as herein provided.

Marginal Notations: Issuance of refunding bonds, Sec. 3, id., Am. Ch. 2, Laws 1913, 2nd Sp. Sess.

5254. Coupons for the interest shall be attached to each bond, so that they may be removed without injury to, or mutiliation of such bond.

They shall be consecutively numbered and bear the same number of the bond to which they are attached, and shall be signed by the state treasurer.

The said coupons shall cover the interest ex-

pressed in said bond from the date of issue until paid; but in no case shall bonds bear interest, nor shall interest be paid thereon for any time before their delivery to the purchaser, as hereinafter provided.

Marginal Notations: Interest coupons, Sec. 4, id., Ch. 29, Laws 1912, 1st Sp. Sess.

5255. Whenever the said loan commissioners may be authorized by law to issue bonds, or shall have decided to refund or redeem all or any part of the existing indebtedness of this state they shall direct the state treasurer to advertise for a sale of the bonds to be issued for that purpose, by causing a notice of such sale to be published once a week for the period of one month in three newspapers published in the state, no two of which shall be published in the same county, and they may further direct the state treasurer, if in their opinion such action is desirable, to advertise as hereinbefore mentioned by at least one insertion in a publication published in the City of New York, in the State of New York, and in one in the City of San Francisco, in the State of California; such notice shall specify the amount of bonds to be sold, the place, day, and hour of sale, and that bids will be received by said treasurer for the purchase of said bonds within one month from the expiration of said publication; and at the place and time named in said notice the said treasurer and loan commissioners shall open all bids received by him and shall award the purchase of said bonds, or any part thereof, to the bidder or bidders making the best offer therefor; provided, that said loan commissioners shall have the right to reject any and all bids; and provided, further, that they may refuse to make any award unless sufficient security

shall be furnished by the bidder or bidders for the compliance with the terms of their bids.

Marginal Notation: Sale of bonds, Sec. 5, id.

5256. When the sale of said bonds shall be awarded by the loan commissioners, they shall provide and procure the necessary bonds, and any expense incurred by them therefor, for the publication of said notices, cost of remitting funds for the payment of interest or money on said bonds, and all necessary incidental expenses shall be paid out of the general fund of the state, upon the order of the state auditor, countersigned by the governor; and a sum of money sufficient to cover said costs and expenses is hereby appropriated out of said fund.

They shall, from time to time after signing said bonds, deliver the mto the state Treasurer, taking his receipt therefor, and charge him therewith.

Marginal Notation: Cost of sale, Sec. 6, id.

5257. The state treasurer shall sell said bonds for cash, or exchange them for any of the indebtedness for the redemption of which they were so issued, but in no case shall said bonds be sold or exchanged for less than their face or par value and the accrued interest at the time of disposal, nor must any indebtedness be redeemed at more than its face value and any interest that may be due thereon.

The treasurer shall endorse by writing or stamping in ink on the face of the paper evidencing the indebtedness received by him in exchange for said bonds,

the time when and the amount for which exchanged.

Marginal Notation: Sale or exchange of bonds, Sec. 7, id.

5258. Moneys received by the treasurer shall be applied by him to the redemption of the indebtedness for the redemption of which bonds were issued, and the treasurer shall give notice, as is provided by law in case of payment and redemption of state warrants, of his readiness to redeem such indebtedness, and thereafter interest on all such indebtedness due and outstanding shall cease.

Before any such indebtedness shall be paid, the state auditor shall endorse on each certificate the amount due thereon, and shall write across the face of each the date of its surrender and the name of the person surrendering, and shall keep proper record thereof.

Marginal Notations: Application of proceeds, Sec. 8, id.

5259. There shall be levied annually upon the taxable property in this state, and in addition to the levy for other authorized taxes, a sufficient sum to pay the interest on all bonds issued and disposed of hereunder, to be placed in the state treasury, in the fund to be known as the "Interest Fund." And each year after such bonds shall have been issued such additional amount shall be levied annually as will pay four per cent of the total amount issued until all the bonds issued hereunder are paid and discharged.

The state board of equalization, or, on their failure,

the state auditor, shall determine the rate of tax to be levied in the different counties in the state to carry out the provisions of this section, and shall certify the same to the board of supervisors, in each county and to the municipal or school authorities; and the said board of supervisors, or authorities, are hereby directed and required to enter such rate on their assessment rolls in the same manner and with the same effect as is provided by law in relation to other state, county, municipal, and school taxes. Every tax levied under the provisions or authority of this section shall be a lien against the property assessed.

All moneys derived from taxes authorized by this section shall be paid into the state treasury, and shall be applied:

First. To the payment of the interest on the bonds issued hereunder.

Second. To the payment of the principal of such bonds;

Provided, that all moneys remaining in the interest fund after the payment of the interest and all moneys remaining in the "redemption fund" after all of said bonds shall have been paid and discharged, shall be transferred by the state treasurer to the state "general fund".

Marginal Notations: Tax levy, Sec. 9, id.

5260. Whenever, after the expiration of the fifteen years from the date of issuance of any bonds under this chapter, there remains after the payment

of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the state treasurer to advertise, as in the manner of advertising by the loan commissioners for bids for sale of bonds, which advertisement shall state the amount of moneys in the said redemption fund, and the number of bonds, numbering them in the order of their issuance, commencing at the lowest number then outstanding, which said fund is set apart to pay and discharge; and if such bonds so numbered in such advertisements shall not be presented for payment and cancellation at the expiration of such publication, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the expiration of such publication. Before any such bonds shall be paid they shall be presented to the state auditor, who shall endorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering. The state auditor shall keep a record of all bonds issued and disposed of by the state treasurer, showing their number, rate of interest, date and amount of sale, when, where, and to whom, payable, and if exchanged, for what, and when presented for redemption the date, amount due thereon, and person surrendering. The boards of supervisors of the counties, the municipal and school authorities, are hereby authorized and directed to report to the loan commissioners of the state their bonded and outstanding indebtedness, and said loan commissioners may, on written demand, require an official report from the board of supervisors of counties, the municipal or school authorities, of their bonded and outstanding indebtedness, and said loan

commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness, upon the official demand of said authorities, in the same manner as other state indebtedness, and they shall issue bonds for any indebtedness now allowed, or that may be hereafter allowed by law, to said county, municipality, or school district upon official demand by said authorities. The county, municipality, or school district shall pay into the state treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the state board of equalization, or on their failure by the state auditor, to be levied for the payment of the principal of such bonds issued in redemption, or refunding, or of other bonds issued to such county, municipality, or school district, as herein provided, in the same manner as is herein provided for the payment of the principal and interest of state indebtedness, and, in addition, the interest paid by the state on such bonds.

Marginal Notation: Redemption of bonds, Sec. 10, id.

5261. When the treasurer pays or redeems any indebtedness he shall endorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so paid or redeemed, the words "redeemed and cancelled" with the date of cancellation. He shall keep a full and particular account and record of all his proceedings of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings with his annual report, to be by the governor laid before the legislature at its

meeting. All books and papers pertaining to the issuance and payment of bonds and interest thereon shall at all times be open to the inspection of the party interested, or to the governor, or committee of either branch of the legislature, or a joint committee of both.

Marginal Notation: Cancellation of redeemed bonds, Sec. 11, id.

5262. It shall be the duty of the state treasurer to pay the interest on said bonds when the same falls due out of the said interest fund, if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund; provided, that the state auditor shall first draw his warrant on the state treasurer, payable to the order of said treasurer, for the amount of such deficiency, out of the general fund.

*Marginal Notation*s Payment of interest, Sec. 12, id.

5263. It shall be the duty of said loan commissioners to make a full report of all their proceedings to the governor on or before the first day of January of each year, and said reports shall be transmitted by the governor to the State legislature.

Marginal Notation: Report of loan commissioners, Sec. 13, id.

5264. No bond issued under the provisions of this chapter shall be taxed within this state.

Marginal Notation: Bonds not taxable, Sec. 14, id.

5265. Whenever the owner of any coupon bond

issued pursuant to the provisions of this chapter shall present such bond to the state auditor with a request for the conversion of such bond into a registered bond, the state auditor shall cut off and cancel the coupons of any such coupon bond so presented and shall stamp, print or write upon such bond so presented, either upon the back or the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner and that, thereafter, the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time, any such bond may be transferred by such registered owner in person or by attorney duly authorized, on presentation of such bond to the state auditor and the bond again registered as before, a similar statement being stamped, printed or uritten upon any such bond may be substantially in the following form:

(Date: giving month, year and day.)

This bond is registered pursuant to the statutes in such case made and provided in the name of .....
....., and the interest and principal thereof are hereafter payable to such owner.

.....
State Auditor.

If any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. The state auditor shall enter in the register of said bonds kept by him pursuant to the provisions of this chapter, or in a separate book, the fact of the registration of such bond

and in whose name respectively, so that said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

Marginal Notation: Registration of bonds, Ch. 50, Laws 1913, 2nd Sp. Sess.

Exhibit G

(Chap. 614, 51st Cong. 1st Sess., June 25, 1890.)
BE IT ENACTED, etc., That the act of the Revised Statutes of Arizona of eighteen hundred and eighty-seven, known as "Title XXXI—Funding," be and is hereby, amended so as to read as follows, and that as amended the same is hereby approved and confirmed, subject to future territorial legislation:

Marginal Notation: Arizona funding act amended and approved.

TITLE XXXI—FUNDING AND LOAN

Chapter One

"Territorial, County, Municipal, and School District Indebtedness.

"Par. 2039. (Sec. 1) For the purpose of liquidating and providing for the payment of the outstanding and existing indebtedness of the territory of Arizona and such future indebtedness as may be or is now authorized by law, the governor of the said territory together with the territorial auditor and territorial secretary, and their successors in office, shall cons-

titute a board of commissioners, to be styled the loan commissioners of the Territory of Arizona, and shall have and exercise the powers and perform the duties hereinafter provided.

Marginal Notation: Board of loan commissioners constituted.

"Par. 2040. (Sec. 2.) It shall be, and is hereby, declared the duty of the loan commissioners to provide for the payment of the existing territorial indebtedness due, and to become due, or that is now, or may be hereafter, authorized by law and for the purpose of paying, redeeming, and refunding all or any part of the principal and interest, or either of the existing and subsisting territorial legal indebtedness, and also that which may at any time become due, or is now or may be hereafter authorized by law, the said commissioners shall, from time to time, issue negotiable coupon bonds of this territory when the same can be done at a lower rate of interest and to the profit and benefit of the territory.

Marginal Notations: Duty of loan commissioners Issue of negotiable coupon bonds.

"Par. 2041. (Sec. 3.) Said bonds shall be issued as near as practicable in denominations of one thousand dollars, but bonds of a lower denomination, not less than two hundred and fifty dollars, may be issued when necessary. Said bonds shall bear interest at a rate to be fixed by said loan commissioners, but in no case to exceed five per centum per annum, which interest shall be paid in gold coin, or its equivalent in

lawful money of the United States, on the fifteenth day of January in each year, at the office of the territorial treasurer, or at such bank in the city of New York, in the state of New York, or in the city of San Francisco, in the State of California, or such place as may be designated by said loan commissioners, at the option of the purchaser of said bonds, the place of payment being mentioned in said bonds. The principal of said bonds shall be made payable in lawful money of the United States fifty years after the date of their issue. Said territory reserves the right to redeem at par any of said bonds, in their numerical order, at any time after twenty years after the date thereof.

Marginal Notations: Denominations of bonds. Interest. Maximum. Where payable, etc. Payment of principal. Reserved rights of redemption.

"They shall bear the date of their issue, state when, where, and to whom payable, rate of interest, and when and where payable, and shall be signed by said loan commissioners, and shall have the seal of the territory affixed thereto, and countersigned by the territorial treasurer, and bear his official seal, and shall be registered by the territorial auditor in a book to be kept by him for the purpose, which shall state amount sold for, or, if exchanged, for what; and the faith and credit of the territory is hereby pledged for the payment of said bonds and the interest accruing thereon, as herein provided.

Marginal Notations: Form of bonds. Signed, etc. Sealed. Registered. Pledge of payment.

"Par. 2042. (Sec. 4.) Coupons for the interest shall be attached to each bond, so that they may be removed without injury to or mutilation of bond. *Marginal Notation*: Interest Coupons.

They shall be consecutively numbered and bear the same number of the bond to which they are attached, and shall be signed by the territorial treasurer.

Marginal Notation: Consecutive number, etc.

"The said coupons shall cover the interest expressed in said bond from the date of issue until paid; but in no case shall bonds bear interest, nor shall any interest be paid thereon for any time before their delivery to the purchaser, as hereinafter provided.

Marginal Notation: Interest. Limitation.

"Par. 2043. (Sec. 5.) Whenever the said loan commissioners may be authorized by law to issue bonds, or shall have decided to refund or redeem all or any part of the existing indebtedness of this territory, they shall direct the territorial treasurer to advertise for a sale of the bonds to be issued for that purpose, by causing a notice of such sale to be published for the period of one month in some daily newspaper published at the capital of the territory, and at least one insertion in a newspaper published in the city of New York, in the state of New York, and in the City of San Francisco, in the state of California; such notice shall specify the amount of bonds to be sold, the place, day, and hour of sale, and that bids will be received by said treasurer for the purchase of said bonds within one month from the expiration of said

publication; and at the place and time named in said notice, the said treasurer and loan commissioners shall open all bids received by him and shall award the purchase of said bonds, or any part thereof to the bidder or bidders therefor bidding the lowest rate of interest: Provided, That said loan commissioners shall have the right to reject any and all bids: And provided further, That they may refuse to make any award unless sufficient security shall be furnished by the bidder or bidders for the compliance with the terms of their bids.

Marginal Notations: Issue and redemption, etc., of bonds. Advertisement of sale. Bids. Award to lowest bidder. Provisos. Rejection of bids. Security.

"Par. 2044. (Sec. 6.) When the sale of said bonds shall be awarded by the loan commissioners, they shall provide and procure the necessary bonds as in this act provided, and any expense incurred by them therefor, for the publication of said notices, costs of remitting funds for the payment of interest or money on said bonds, and all other necessary incidental expenses under the provisions of this act, shall be paid out of the general fund of said territory, upon the order of the territorial auditor, countersigned by the governor; and a sum of money sufficient to cover said costs and expenses is hereby appropriated out of said fund.

Marginal Notations: Loan commissioners to procure bids. Payment of expenses, etc. Appropriation.

"They shall, from time to time after signing said bonds, deliver them to the territorial treasurer, tak-

ing his receipt therefor, and charge him therewith. The said treasurer shall give to the Territory of Arizona an additional official bond, with two or more sureties, in a sum equal to the amount of bonds delivered to him by the said loan commissioners, which bond shall be approved by the governor and deposited and filed with the secretary of the territory and recorded by him in a book to be kept for that purpose. nd the said treasurer shall stand charged upon his official bond for the faithful performance of the duties required of him under this act.

Marginal Notation: Delivery of bonds. Additional bond of treasurer.

"Par. 2045. (Sec. 7.) The territorial treasurer shall sell said bonds for cash, or exchange them for any of the indebtedness for the redemption of which they were so issued, but in no case shall said bonds be sold or exchanged for less than their face or par value and the accrued interest at the time of disposal, nor must any indebtedness be redeemed at more than its face value and any interest that may be due thereon.

Marginal Notations: Sale or exchange of bonds. Limitations.

"That said treasurer shall endorse by writing or stamping in ink on the face of the paper evidencing the indebtedness received by him in exchange for said bonds, the time when and the amount for which exchanged.

Marginal Notation: Indorsement by treasurer.

"Par. 2046 (Sec. 8.) Moneys received by said

treasurer shall be applied by him to the redemption of the indebtedness for the redemption of which bonds were issued, and the treasurer shall give notice, as is provided by law in case of payment and redemption of territorial warrants, of his readiness to redeem such indebtedness, and thereafter interest on all such indebtedness due and outstanding shall cease.

Marginal Notation: Application of moneys received. Notice of redemption. Cessation of interest.

Before any such indebtedness shall be paid the territorial auditor shall indorse on each certificate the amount due thereon, and shall write across the face of each the date of its surrender and the name of the person surrendering, and shall keep proper record thereof.

Marginal Notation: Indorsement by auditor. Record.

"Par. 2047. (Sec. 9.) There shall be levied annually upon the taxable property in this territory, and in addition to the levy for other authorized taxes, a sufficient sum to pay the interest on all bonds issued and disposed of in pursuance of the provisions of this act, to be placed in the territorial treasury, in the fund to be known as the 'Interest Fund'. And fifty years after such bonds shall have been issued such additional amount shall be levied annually as will pay ten per cent of the total amount issued until all the bonds issued under the provisions of this act are paid and discharged. Nothing herein contained shall be construed to prevent the legislature of Ari-

zona from creating a sinking fund during the life of said bonds for their redemption at maturity.

Marginal Notations: Annual interest tax levy. "Interest fund." Additional ten per cent tax levy. Dis charge of bonds. Sinking fund.

"The territorial board of equalization, or, on their failure, the territorial auditor, shall determine the rate of tax to be levied in the different counties in the territory to carry out the provisions of this act, and shall certify the same to the 'board of supervisors' in each county and to the municipal or school authorities; and the said board of supervisors, or authorities are hereby directed and required to enter such rate on their assessment rolls in the same manner and with the same effect as is provided by law in relation to other territorial, county, municipal and school taxes. Every tax levied under the provisions of authority of this act is hereby made a lien against the property assessed, which lien shall attach on the first Monday in March in each year, and shall not be satisfied or removed until such tax has been paid.

*Marginal Notations*s Determination of taxable rate. Certification and entry of taxable rate on assessment rolls. Tax becomes a lien on property.

"All moneys derived from taxes authorized by provisions of this act shall be paid into the territorial treasury, and shall be applied:

Marginal Notations: Tax moneys to go into treasury.

"First. To the payment of the interest on the bonds issued hereunder.

Marginal Notation: Application of payments.

"Second. To the payment of the principal of such bonds: Provided, That all moneys remaining in the interest fund after the payment of the interest and all moneys remaining in the 'redemption fund' after all said bonds shall have been paid and discharged, shall be transferred by the territorial treasurer to the territorial 'general fund.'

Marginal Notation: Proviso. Transfer of remaining moneys to "general fund."

"Par. 2048. (Sec. 10.) Whenever, after the expiration of the fifty years from the date of issuance of any bonds under this act, there remains after the payment of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the territorial treasurer to advertise, as in the manner of advertising by the loan commissioners for bids, for sale of bonds, which advertisement shall state the amount of money in the said redemption fund, and the number of bonds, numbering them in the order of their issuance, commencing at the lowest number then outstanding, which such fund is set apart to pay and discharge; and if such bonds so numbered in such advertisements shall not be presented for payment and cancellation at the expiration of such publication, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the ex-

piration of such publication. Before any such bonds shall be paid they shall be presented to the territorial auditor, who shall indorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering. The territorial auditor shall keep a record of all bonds issued and disposed of by the territorial treasurer, showing their number, rate of interest, date, and amount of sale, when, where, and to whom payable, and if exchanged, for what, and when presented for the redemption, the date, amount due thereon, and person surrendering.

Marginal Notations: Redemption surplusage. Treasurer to advertise for presentation of certain bonds for payment, etc. Cessation of interest after publication. Indorsement by auditor before payment. Auditor's bond record.

"The boards of supervisors of the counties, the municipal and school authorities, are hereby authorized and directed to report to the loan commissioners of the territory their bonded and outstanding indebtedness, and said loan commissioners may, on written de mand, require an official report from the board of supervisors of counties, the municipal or school authorities, of their bonded and outstanding indebtedness, and said loan commissioners shall provide for the redeeming or refunding of the county, municipal, and school district indebtedness, upon the official demand of said authorities, in the same manner as other territorial indebtedness, and they shall issue bonds for any indebtedness now allowed, or that may be hereafter allowed by law, to said county, municipality, or

school district, upon official demand by said authorities; the county, municipality, or school district to pay into the territorial treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the territorial board of equalization, or on their failure by the territorial auditor to be levied for the payment of the principal of the bonds issued in redemption, refunding, or other bonds issued to such county, municipality, or school district when the same shall become due, and, in addition, a rate of interest paid by the territory on such bonds.

Marginal Notations: County, municipal, and school district indebtedness. Report to loan commissioners. Redemption or refunding of same, on demand, into territorial bonds. Additional principal and interest bond-tax levies.

"Par. 2049. (Sec. 11.) When the treasurer pays or redeems any indebtedness he shall indorse, by writing or stamping in ink, on the face of the paper evi dencing such indebtedness so paid or redeemed, the words 'redeemed and cancelled' with the date of cancellation. He shall keep a full and particular account and record of all his proceedings under the act and of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings under this act with his annual report, to be by the governor laid before the legislature at its meeting. All books and papers pertaining to the matter provided in this act shall at all times be open to the inspection of the party interested, or to the governor, or a committee of either branch of the legislature, or a joint committee of both.

Marginal Notations: Cancellation upon payment of certificates, etc., by treasurer. Treasurer's bond record. Treasurer's annual report. Inspection of bond record, etc.

"Par. 2050. (Sec. 12.) It shall be the duty of the territorial treasurer to pay the interest on said bonds when the same falls due out of the said interest fund, if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund: Provided, That the territorial auditor shall first draw his warrant on the territorial treasurer, payable to the order of said treasurer, for the amount of such deficiency, out of the general fund.

Marginal Notations: Payment of bond interest. Proviso. Deficiency.

"Par. 2051. (Sec. 13.) It shall be the duty of said loan commissioners to make a full report of all their proceedings had under the provisions of this act to the governor on or before the first day of January of each year, and said reports shall be transmitted by the governor to the territorial legislative assembly.

Marginal Notation: Loan commissioner's annual report.

"Par. 2052. (Sec. 14.) No bond issued under the provisions of this act shall be taxed within this ter ritory."

Marginal Notation: Exemption from taxation.

Sec. 15. That nothing in this act shall be construed to authorize any future increase of any indebtedness

in excess of the limit prescribed by the "Harrison Act:" Provided, however, That the present existing and outstanding indebtedness, together with such warrants as may be issued for the necessary and current expenses of carrying on territorial, county, municipal, anr school government for the year ending December thirty-first, eighteen hundred and ninety, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates, or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the Harrison Act."

Marginal Notations: Maximum limit of indebtedness. Proviso. Exceptions. Limitation thereafter.

That all acts or parts of acts in conflict with this act are hereby repealed.

Marginal Notation: Repeal.

Exhibit H

(Chap. 200, 53d Cong. 2d Sess., August 3, 1894.) BE IT INACTED, etc., That an act entitled "An act approving, with amendments, the funding act of Arizona," approved June twenty-fifth, eighteen hundred and ninety, and paragraph twenty hundred and fifty-two (section fifteen) of said act, be, and the same is hereby, amended by adding thereto as follows:

"PROVIDED further, however, That the present outstanding warrants, certificates, and other evidences of indebtedness issued subsequent to December thirty first, eighteen hundred and ninety, for the necessary

and current expenses of carrying on the territorial government only, together with such warrants as may be issued for such purpose for the years ending December thirty-first, eighteen hundred and ninety-four, and December thirty-first, eighteen hundred and ninety-five, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the 'Harrison Act'."

Marginal Notation: Funding of debts for necessary expenses.

Sec. 2. That all acts or parts of acts in conflict with this act are hereby repealed.

Marginal Notation: Limitation.

Exhibit I

> "An act amending and extending the provisions of an act of congress entitled 'An act approving with amendments the funding act of Arizona,' approved June twenty-fifth, eighteen hundred and ninety, and the act amendatory thereof and supplementary thereto, approved August third, eighteen hundred and ninety-four.

"Be it enacted by the senate and house of representatives of the United States of America in congress assembled, that the provisions of the act of congress approved June twenty-fifth, eighteen hundred and ninety, and August third, eighteen hundred and ninety-four, authorizing the funding of certain

indebtedness of the territory of Arizona, are hereby amended and extended so as to authorize the funding of all outstanding obligations of said territory, and the counties, municipalities, and school districts thereof, as provided in the act of congress approved June twenty-fifth, eighteen hundred and ninety, until January first, eighteen hundred and ninety-seven, and all outstanding bonds, warrants, and other evidences of indebtedness of the territory of Arizona, and the counties, municipalities, and school districts thereof, heretofore authorized by legislative enactments of said territory bearing a higher rate of interest than is authorized by the aforesaid funding act approved June twenty-fifth, eighteen hundred and ninety, and which said bonds, warrants, and other evidences of indebtedness have been sold or exchanged in good faith in compliance with the terms of the act of the legislature by which they were authorized, shall be funded, with the interest thereon which has accrued and may accrue until funded into the lower interest bearing bonds as provided by this act.

"Sec. 2. That all bonds and other evidences of indebtedness heretofore funded by the loan commissioners of Arizona under the provisions of the act of congress approved June twenty-fifth, eighteen hundred and ninety, and the act amendatory thereof and supplemental thereto, approved August third, eighteen hundred and ninety-four, are hereby declared to be valid and legal for the purposes for which they were issued and founded; and all bonds and other evidences of indebtedness heretofore issued under the authority of the legislature of said territory, as hereinbefore authorized to be funded, are hereby confirmed, ap-

proved, and validated, and may be funded as in this act provided until January first, eighteen hundred and ninety-seven: provided, that nothing in this act shall be so construed as to make the government of the United States liable or responsible for the payment of any of said bonds, warrants, or other evidences of indebtedness by this act approved, confirmed, and made valid, and authorized to be funded.

"Approved June 6th, 1896." (29 Stat. 262.)

Exhibit J

CHAPTER 54.
(House Bill No. 65)

AN ACT

Ratifying, Approving and Validating the Highway Construction and Improvement Bonds of Maricopa County, in the Sum of Four Million ($4,000,000.00) Dollars, and the Sale Thereof, Which Bonds Were Authorized to be Issued and Sold by the Board of Supervisors of said County, at an Election by the Property Tax Payers of Said County Held May 17th, 1919, With an Emergency Clause.

WHEREAS, at an election by the property tax payers of Maricopa County, Arizona, held May 17th, 1919, under the provisions of an Act of the Legislature of Arizona entitled, "an Act providing for the creation of County Highway Commissions and prescribing the powers and duties of such commissions," approved March 8, 1917, and Acts amendatory thereof and supplemental thereto, the Board of Supervisors of said

county were authorized and empowered to issue and sell the bonds of said county in the sum of Four Million ($4,000,000.00) Dollars, for the purpose of providing funds for the construction and improvement of certain portions of the public highways of said county; and

WHEREAS, pursuant thereto, the Board of Supervisors of Maricopa County, Arizona, did on the 9th day of July, 1919, enter into a contract of sale of said bonds with the following named persons, partnerships and corporations, to-wit:

Bolger, Mosser & Willaman, by T. J. Grace, Agent,
Elston and Company, by B. K. Blanchet, Agent,
C. W. McNear and Company, by B. K. Blanchet, Agent,

Whitaker and Company, by B. K. Blanchet, Agent,
Mississippi Valley Trust Company, by B. K. Blanchet, Agent,

Sidney Spitzer and Company, by B. K. Blanchet, Agent,

Stacy and Braun, by B. K. Blanchet, Agent,
Terry, Briggs and Company, by B. K. Blanchet, Agent,

Prudden and Company, by B. K. Blanchet, Agent,
A. T. Bell and Company, by B. K. Blanchet, Agent,
Bosworth, Chanute and Company, by B. K. Blanchet, Agent.

Graves, Blanchet and Thornburgh, by B. K.

Blanchet, Agent, (hereinafter designated as Graves, Blanchet and Thornburgh and associates) by virtue of which contract, the said Board of Supervisors did thereafter deposit said bonds with the Central Trust Company of Chicago, Illinois, to be delivered by it to the said Graves, Blanchet and Thornburgh and associates, upon the payment thereof by them, according to the terms of said contract; and

WHEREAS, the said Graves, Blanchet and Thornburgh and associates have, under the terms of said contract, taken a proportionate part of said bonds and have paid therefor One Million ($1,000,000.00) Dollars pursuant to the provisions of said contract of sale, which said sum of One Million ($1,000,000.00) Dollars is now being expended by the Maricopa County Highway Commission in the construction of such public highways; and

WHEREAS, the validity of said bonds and the contract of sale thereof by the board of supervisors of Maricopa County, Arizona, has been and is now questioned and disputed by reason of certain alleged irregularities in the issuance and sale thereof as aforesaid, and litigation in respect thereto is now pending in the courts of the State of Illinois;

NOW, THEREFORE, BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ARIZONA:

Section 1. That the bonds of the County of Maricopa in the sum of Four Million ($4,000,000.00) Dollars, authorized by the election by the property tax payers of said county held May 17th, 1919, for the

purpose of providing funds for the construction and improvement of certain portions of the public highways of Maricopa County, and the contract for the sale of such bonds entered into by the Board of Supervisors of said Maricopa County with Graves, Blanchet and Thornburgh and associates on the 9th day of July, 1919, are hereby ratified, approved and declared valid.

Section 2. All acts and parts of act in conflict with the provisions of this act, are hereby repealed.

Section 3. Whereas, it is necessary for the preservation of the public peace and safety, and to prevent a great financial loss to Maricopa County through delay in the construction and improvement of its public highways, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage and approval by the Governor, and this act is hereby exempted from the operation of the REFRENDUM PROVISIONS of the State Constitution.

Approved March 7th, 1921.

EXHIBIT K.

Chapter 86.

(Senate Bill No. 160.)

AN ACT

Ratifying, Approving and Validating the Highway Construction and Improvement Bonds of Maricopa County, in the Sum of Four Million Five Hundred Thousand ($4,500,000.00) Dollars, Authorized to be Issued and Sold by the Board of Supervisors of Said County at an Election by the Property Tax Payers of Said County Held December 31st, 1920.

WHEREAS, at an election by the property tax payers of Maricopa County, Arizona, held December 31st, 1920, the Board of Supervisors of said County were authorized and empowered to issue and sell the bonds of said county to the amount of Four Million Five Hundred Thousand ($4,500,000.00) Dollars, for the purpose of providing funds for the construction and improvement of certain public highways of said county; and

WHEREAS, the right and power of the Board of Supervisors of said county to issue and sell bonds, and the validity of said bonds when so issued and sold by the Board of Supervisors of said county has been and is now questioned and disputed:

NOW, THEREFORE, BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ARIZONA:

Section 1. That the election by the property tax

payers of Maricopa County, Arizona, held December 31st, 1920, by and through which the Board of Supervisors of Maricopa County were authorized and empowered to issue and sell the bonds of said county to the amount of Four Million Five Hundred Thousand ($4,500,000.00) Dollars, for the purpose of providing funds for the construction and improvement of certain of the public highways of said county, was a valid election and conferred upon the Board of Supervisors of said county the power and authority to issue and sell said bonds, and that said bonds when issued and sold by said Board of Supervisors are hereby declared to be free from any defect or invalidity by reason of any act or omission of said Board of Supervisors, in calling and holding said election or preparatory thereto.

Approved March 14th, 1921.